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IN THE

Supreme Court of the United States

October Term, 1963

NO. 1102

HOUSTON MARITIME ASSOCIATION, INC., MASTER STEVEDORES ASSOCIATION OF TEXAS, AND THE INDIVIDUAL RESPONDENT COMPANIES WHO ARE MEMBERS OF THE ASSOCIATIONS, *Petitioners*

-versus-

NATIONAL LABOR RELATIONS BOARD, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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-versus-

NATIONAL LABOR RELATIONS BOARD, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners Houston Maritime Association, Inc., Master Stevedores Association of Texas, and the individual companies members of those associations respectfully pray that a writ of certiorari issue to review the judgment of the Court of Appeals for the District of Columbia Circuit;

OPINIONS BELOW

The unreported opinion of the Court of Appeals, decided February 13, 1964, is printed *infra*, Appendix pp. 16, *et seq.* The initial Decision and Order of the National Labor Relations Board, decided December 29, 1958, is reported at 122 NLRB 692, and is printed *infra*, Appendix pp. 64-96, *et seq.*; its Supplemental Decision and Amended Order, decided October 22, 1962, is reported at 139 NLRB No. 9 and is printed *infra*, Appendix pp. 39-63, *et seq.*

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit was entered February 13, 1964. It is printed *infra*, Appendix pp. 23-24, *et seq.* Decree upon the judgment was entered March 26, 1964. It is printed *infra*, Appendix pp. 24-38, *et seq.*

The jurisdiction of this Court is invoked under the Act of June 25, 1948, c. 646, 62 Stat. 928, 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED FOR REVIEW

(a) Where employers paid their employees their full wages, and the employees paid a percentage of such wages to the union as a service charge for the use of the union-operated hiring hall, whether the employers can lawfully be required jointly and severally with the union to pay workers hired through the hall amounts collected from them by the union in excess of reasonable use charges, in view of the settled law that employers cannot lawfully give financial aid to a union and the clear result of such

requirement being that any such employer payments to the workers *pro tanto* would increase the union's funds by relieving it of the necessity to make such refunds.

(b) Where the union operated a hiring hall and collected as a service charge from union and non-union workers alike who gained employment through the hall equal percentages of their wages, and the National Labor Relations Board first ordered repayment of all charges collected by the union and then modified this order to require repayment only to the non-union workers, and the Court of Appeals modified this order to require repayment only of amounts in excess of the reasonable cost of the union's services, whether such reimbursement order is nonetheless punitive and therefore unlawful as to the employers, who did not and lawfully could not determine what amounts were reasonable and who received none of the charges collected by the union.

(c) Whether employers can lawfully be held to have participated in the union's discriminatory operation of a union-operated hiring hall on the ground that many of the hiring supervisors were union members and generally knew which hiring hall applicants were union men and therefore presumably followed the International's constitutional injunction to accord preference to union members (and on the ground that the employers facilitated the union's collection of hiring hall service charges by paying wages in two checks, the amount of one of which equaled the service charges), the only testimony being that the hiring supervisors called the hall for men without regard to union membership and hired them because of fitness to perform tasks requiring different skills, and only one supervisor (at the time of trial a union business agent and formerly a

union official) testifying he generally knew which of the men named to him by the hall as available for work were union members.

STATEMENT

The circumstances of this matter were these:

At the Port of Houston, Texas, the steamship owners and operators for a number of years have had a contract with Local 1351 of the International Longshoremen's Association under which the union local has the exclusive operation of a hiring hall through which the steamship operators (hereafter called the employers) obtain their dockside clerical labor (the men who keep records of the time worked by longshore gangs, who check cargo loaded on or discharged from ocean-going steamships, and who maintain dockside records of such cargo). R,II, 19-25, 307. When a greater number of such clerical workers were needed than the one's regularly employed, an employer's hiring clerk would call the business agent at the hall by telephone and from the names of men the business agent would say were available for work would inform the business agent which he wished to employ. Occasionally the hiring clerk would simply tell the business agent how many men were needed and ask them to be dispatched to the shipside without naming the particular men he wished for work. R,II, 40-41.

In November, 1954, three non-union men who obtained work through the hall filed charges with the National Labor Relations Board that the business agent had referred them for employment less often than he had men who were union members, and that the non-union men were charged greater percentages of their wages for the services

rendered by the union in operating the hiring hall than were union members. R,I, 40, 49, 53. No charges were then made against the employers, and the Board issued complaints only against the union.

In May, 1955, the union settled the complaints by reimbursing the three men certain sums, and by making the percentage of wages collected as a service charge the same for union and non-union workers. R,I, 69, etc. (The service charge was at first fixed by the union at 5% of the earned wages. In November, 1955, it was reduced to 3% where it remains.) In the process of making the settlements it was noted that the contract with the employers contained a clause which said union members would be accorded preference in employment. The associations of employers were then made parties to the complaints, and as a part of the settlements the contractual language according a preference was stricken. R,II, 294, 305. It has never since then been in the agreement. These settlements were completed in June, 1955. R,I, 72-79; R,II, 296.

Later in 1955 the same complainants charged that they were still being discriminated against, R,I, 90, 100, 105, and the complaints here were issued in November, 1956. R,I, 119-151.

After hearing the Trial Examiner found, in substance, that the individual complainants had been discriminated against, that the percentages had been equalized and the preference clause in the contract had been removed and hence there was no basis for any charges of illegality there, but that the operation of the hiring hall was unlawful in that the hiring supervisors were union members and had had knowledge of and had obeyed the constitution of the International Longshoremen's Association which enjoined

union members to give preference in employment to other members and in that the union had required all applicants for work through the hall to appoint it their bargaining agent. The employers were found to have made the union their hiring agent by entering into the unlawful hiring contract and to have been privy to the union's discriminatory acts by reason of the knowledge of their hiring clerks of the International's constitutional provision and observance of it, and having facilitated the union's discriminatory acts by paying their employees their total wages in two checks, one of which was for the amount of the union's percentage service charges. R,I, 244-289.

The Board on December 29, 1959, in substance adopted the conclusions and recommendations of the Trial Examiner, rejecting the employers' contentions that any discrimination practiced by the union at the hiring hall was not their responsibility on the grounds that (1) the exclusive hiring arrangement was unlawful because the contract did not contain the safeguards required by the Board's Mountain Pacific decision (119 NLRB 883), (2) the companies were aware of the discrimination through the knowledge of their hiring clerks and (3) they facilitated by the check payments the union's collection of percentages. R,I, 328-351. It ordered the union and the employers jointly and severally to make whole the individual complainants, to reimburse all the men both union and non-union all the service charges paid to the union, and ordered the employers to cease dealing with the union until it could prove its bargaining status by an election.

Enforcement of this order was sought in the Court of Appeals for the Fifth Circuit, but after the decisions of this Court in *Local 357, International Brotherhood of*

Teamsters v. N.L.R.B., 1961, 365 U.S. 667, and *Local 60, United Brotherhood of Carpenters v. N.L.R.B.*, 1961, 365 U.S. 651, the Court of Appeals permitted the Board to withdraw the case for reconsideration.

On October 22, 1962, the Board by its Supplemental Decision reversed its previous decision that the hiring hall contract was unlawful, in deference to the decisions of this Court in the Local 357 and Local 60 cases, *supra*, and modified its previous decision to require refund of the percentage service charges to the non-union workers only. R,II, 369-382.

The employers were held jointly and severally liable with the union by a majority of the Board upon the ground that they violated the Act "only by exacting a service fee as a percentage of wages from non-member job applicants as a condition of employment." R,II, 373.

Relief from this decision was sought by the union in the Court of Appeals for the District of Columbia, and enforcement against the employers was sought there by the Board. That Court decided that the Board's order should be enforced in part. It held the Board's order was unlawful in requiring reimbursement to the non-union workers of *all* the percentages of their wages paid to the union as a service charge for the use of the hiring hall but held it could lawfully require reimbursement of the amounts that were greater than the union's services were reasonably worth. It held the employers were liable for the union's discriminatory acts upon substantially the same grounds as had the Board. It remanded the cases to the Board to determine what was such a reasonable service charge.

From this decision petitioners seek relief herein.

REASONS FOR GRANTING THE WRIT

1. The law is well-settled both by the express language of the Labor Relations Act and decisions of this Court that an employer cannot in any way give financial support to a union. The express holding of the Board and of the Court of Appeals here is that the union collected from the employees moneys in excess of what the union was lawfully entitled to collect to operate the hiring hall, and the union of course used such excess moneys for its own purposes.

It is respectfully submitted that to hold the employers jointly and severally liable with the union to refund such moneys wrongfully exacted from persons who gained employment through the hiring hall is to require the employers to give direct, and not merely indirect, financial aid to the union and thus to require the employers to act contrary to law.

The Labor Relations Act forbids an employer to give any financial aid to a union in clear and emphatic language. Section 8(a)(2) of the Act, July 5, 1935, c. 372, § 8, 49 Stat. 452, as amended, 29 U.S.C. § 158, provides:

> "It shall be an untair labor practice for an employer—
>
> (2) . . . to dominate . . . any labor organization or contribute financial or other support to it . . . . ."

Section 302(a)(1) of the Act, 29 U.S.C. § 186, is equally direct in providing:

> "It shall be unlawful for any employer or association of employers . . . to pay, lend, or deliver . . . any money or other thing of value—
>
> (1) to any labor organization. . . ."

This Court, in *United States v. Ryan*, 1956, 350 U.S. 299, 76 S. Ct. 400, has explicitly held the statutory language is to be given its full effect, and in *Bethlehem Steel Co. v. N.L.R.B.* D.C. Cir. 1941, 120 F.2d 641, *Sheet Metal Contractors Association v. Sheet Metal Workers International Association*, 9 Cir. 1957, 248 F.2d 307, cert. den. 355 U.S. 924, 78 S.Ct. 367, *Plumbing & Pipe Fitting Trust v. Conditioned Air & Refrigeration Co.*, 9 Cir. 1958, 253 F.2d 427, and *Mechanical Contractors Association of Philadelphia v. Local Union*, 3 Cir. 1959, 265 F.2d 607, the Circuit Courts have held unlawful and forbidden by the Act indirect contributions by employers which relieved the union of financial obligations and were calculated to advance the union's interests. In *Dixie Beading Mfg. Co. v. N.L.R.B.*, 5 Cir. 1959, 268 F.2d 901, payment by an employer to a union of initiation fees and dues on behalf of employees in lieu of "a retroactive wage increase" was held unlawful.

Here, simply by failing to refund the moneys collected in excess of reasonable service charges for the use of the union-operated hiring hall, the union could impose on the employers through legal process its own financial support, a more glaring violation of the statute than the indirect contributions held unlawful in the above referred to cases, it is respectfully submitted.

How, consonant with the statute and these decisions, can it be reasonably contended that an order is not unlawful the incontestable effect of which is to increase the union's funds by requiring the employers to pay to workers moneys wrongfully collected by the union and spent on union activities?

2. Following the decision of this Court in *Local 357, International Brotherhood of Teamsters v. N.L.R.B.*, 1961, 365 U.S. 667, 81 S.Ct. 835, the Board has here withdrawn its first decision which required reimbursement to all persons employed through the hiring hall, union members and non-members alike, of all the service charges made by the union. It is respectfully submitted that withdrawing such decision upon the ground that under this Court's Local 357 decision the exclusive hiring hall contract arrangement here was lawful shows clearly what was implicit in the Board's decision, that the reimbursement order was penal in character, to punish the union and the employers for being parties to what was then held to be an unlawful arrangement.

The supplemental decision limiting the reimbursement order to require repayment of all the service charges paid by them to the non-union workers the Court of Appeals has now held to be unlawful also.

Petitioner respectfully submits that even further reduced as it is by the Court of Appeals to require reimbursement of amounts in excess of a reasonable service charge the order is equally punitive and unlawful as to the employers, who are thus required to pay amounts which they have already once paid to their employees, to persons who could not have been by the employers discriminated against, for the reason that they were in fact hired and then earned the wages from which they paid to the union the percentage service fees, in amounts which the union determined (erroneously, it now has been held) were reasonable and in the fixing of which the employers did not then and cannot lawfully now have any hand in determining.

This Court has set forth the standard by which a reimbursement order of the Board is to be judged to determine whether it is punitive or not in *Local 60, United Brotherhood of Carpenters v. N.L.R.B.*, 1961, 365 U.S. 651, 81 S.Ct. 875, as follows:

> ". . . Where no membership in the union was shown to be influenced or compelled by reason of any unfair practice, no 'consequences of violation' are removed by the order compelling the union to return all dues and fees collected from the members; and no 'dissipation' of the effects of the prohibited action is achieved. National Labor Relations Board v. District 50 United Mine Workers, supra, 355 U.S. 463, 78 S.Ct. 392. The order in those circumstances becomes punitive and beyond the power of the Board. Cf. Republic Steel Corp. v. National Labor Relations Board, 311 U.S. 7, 10, 61 S.Ct. 77, 78, 85 L.Ed. 6. . . ."

How can it be argued that the order is not punitive *as to the employers*, when the Court of Appeals now finds the case to be simply one where the union may have collected for its services a larger fee than it was entitled to?

Here again the effect of the Court of Appeals decision is to require unlawful acts on the part of the employer, for at the hearing upon remand the employer would be entitled to produce and to require to be produced evidence establishing that the union's charges are reasonable. This would of course entail investigation into the cost of operation of the union-operated hiring hall, and the cost also of the prosecution of the union's normal activities and what would constitute a lawful proportionate alloca-

tion of such costs to the hall's operation. How could the employer thus proceed without in fact committing the unfair labor practice of dominating or interfering with the administration of the union? (Section 8(a)(2) of the Act, 29 U.S.C. 158, which provides "It shall be an unfair labor practice for an employer . . . (2) to dominate or interfere with the formation or administration of any labor organization. . . .")

This is the first case of which petitioners have knowledge presenting squarely the question of responsibility of the employers for the amount of charges made by the union for its services in operating a union-operated hiring hall. It is respectfully submitted this is a matter of great public importance, decided incorrectly by the Court of Appeals in that by holding the employers responsible with the union it holds employers have the right to determine what union costs are reasonable or unreasonbale and hence have the right to exercise to some degree supervision over union activities.

3. Petitioners are of course well aware that this Honorable Court will not normally concern itself with matters of evidence. The matters of law here, however, are so commingled with evidence that petitioners with respect must direct the Court's attention somewhat to such evidentiary matters.

The acts of discrimination charged against the union by the individual complainants were that their names were withheld by the union at the hall from those given hiring supervisors as available for employment so that union members obtained employment preferentially over them. Certainly as the initial Board's decision showed the em-

ployers were held liable for the discriminations against the individuals only by virtue of being parties to a hiring arrangement held unlawful by the Board.

Following the decision of this Court in the Local 357 case, *supra*, the Board has now recognized the legality of the hiring arrangements here, and under the decision of the Court of Appeals the case (outside of the claims of discriminatory practices engaged in by the union at the hall against the individual complainants) has been reduced to one simply of possibly excessively large fees charged the non-union applicants at the hall by the union.

What possible relation can there be between the knowledge of the employers' hiring supervisors of the International's constitutional provision requiring showing of preference to union members, and holding the employers jointly with the union for excessively large service charges?

And upon what just ground can the employers be held responsible with the union for excessive charges simply because they paid all employees by check instead of cash and mathematically calculated the percentage service charge required by the union and paid such amount to a worker by a separate check?

This Court has recently held that a union can lawfully demand that an employer negotiate with it for an agreement under which the employer would secure to the union from wages earned by non-union workers sums equivalent to union dues and fees paid the union by members or by check-off out of union members' earnings. *N.L.R.B. v. General Motors*, 1963, 373 U.S. 734, 83 S.Ct. 1453.

The holding of the Court of Appeals would extend this decision and in substance make the employer guilty of an

unfair labor practice unless it determined and could prove that such amounts were reasonable. Petitioners respectfully submit neither the Labor Relations Act nor the decisions of this Court can rightfully be so interpreted, and it is a matter of public importance that employers hiring through union-operated hiring halls not be burdened with the duty to see that the union's charges are reasonable in amount.

CONCLUSION

Petitioners Houston Maritime Association, Inc., Master Stevedores Association of Texas, and the employer companies members thereof, pray that this petition for writ of certiorari be granted and that the decision and judgment of the Court of Appeals be in all things reversed with instructions that the petition of the National Labor Relations Board for enforcement of its order against petitioners be in all things denied and for costs and such other relief as may be just.

Respectfully submitted,

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Houston Maritime Association, Inc., and Master Stevedores Association of Texas, and Their Members, the Employer Companies

CERTIFICATE OF SERVICE

I hereby certify that service of the within brief was made upon Arnold Ordman, General Counsel for the National Labor Relations Board, by mailing same to him at his offices at the National Labor Relations Board, Washington, D. C., and upon Sewall Myer, Esq., by delivering same to him at his office, First City National Bank Building, Houston, Texas, and on Herbert S. Thatcher, Esq., by mailing copy to him at his office at 1009 Tower Building, Washnigton 5, D. C., this ____ day of May, 1964.

ROBERT EIKEL

APPENDIX

OPINION OF

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17521

LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, *AFL-CIO*, ET AL., *Petitioners*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

No. 17631

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

HOUSTON MARITIME ASSOCIATION, INC., MASTER STEVEDORES ASSOCIATION OF TEXAS AND THE INDIVIDUAL RESPONDENT COMPANIES WHO ARE MEMBERS OF THE ASSOCIATIONS, *Respondents*

On Petition to Review and Petition to Enforce An Order of the National Labor Relations Board

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Decided February 13, 1964

FAHY, *Circuit Judge:* These consolidated cases involve the validity of a Board order growing out of proceedings concerning primarily the operation of a hiring hall by Lo-

cal 1351, Steamship Clerks, and Checkers, herein usually referred to as the Union, and by the International, in connection with the hiring of employees by the employers, designated more fully in the margin,[1] and for convenience referred to usually in this opinion simply as the Employers, with whom the Union had a collective bargaining agreement. In addition to problems arising out of the general operation of the hiring hall there are involved also charges of specific discrimination against two employees, Linnenberg and Vinson. As to the hiring hall itself the charges are that it was operated by the Union, with the International and the Employers sharing responsibility, in such a manner as to discriminate against applicants for employment who were not members of the Union.

The Board found that Vinson and Linnenberg were discriminatorily deprived of employment because they were not members of the Union and had filed unfair labor practice charges against the Union, and that the Union and its business agent, Morrow, had caused such discrimination against Linnenberg in violation of Section 8(b)(2) and (1)(A) of the Act, and along with the International had caused the discrimination against Vinson. The Employer Associations were also found to have violated Section 8 (a) (1), (3) and (4) in respect to Linnenberg, and along with the Companies who were members of the Employer Associations with respect to Vinson "by reason of being parties to the unlawful hiring arrangement which made the discrimination possible."

[1] The Employers are the Houston Maritime Association, Inc., the Master Stevedores Association of Texas and the twenty-eight individual Member-Companies that make up these associations

In a Supplemental Decision modifying findings originally made prior to the decision in *Local 357, International Bhd. of Teamsters v. NLRB*, 365 U.S. 667 (1961), the Board also found,

> that the Respondent Associations and their Member Companies violated Section 8(a)(1)(2) and (3) by being parties to a hiring arrangement with Respondent Local 1351 which gave preference in employment to members of said Local and its sister locals and which required job applicants as a condition of employment to designate Local 1351 as their bargaining representative and pay it a percentage of their wages; by facilitating Local 1351's collection of such percentages; [and] that Respondent Unions and Local 1351's business agent Morrow violated Section 8(b)(2) and (1)(A) of the Act by maintaining and operating an unlawful hiring hall . . . .

The reasoning of the Board and the grounds for its Decision are set forth in the record at length, and the Decision is reported.[2] It seems to us unnecessary to go into like detail in this opinion. We have concluded that the Board's findings of discrimination against Vinson and Linnenberg and against non-Union members in the operation of the hiring hall are sustained by substantial evidence considering the record as a whole, and that with one exception the order of the Board should be enforced, containing, as it does, remedial provisions appropriate, with the one exception, to the violations found. The exception is now discussed.

The Board required reimbursement to all non-Union men of the service fees—percentage of wages—paid by

[2] 122 N.L.R.B. 692 (1958), modified, 139 N.L.R.B. 352 (1962).

them to the Union as a charge for obtaining employment through the hiring hall. The Union and Employers were made jointly and severally responsible for such reimbursement. Reimbursement was required only of percentages exacted from non-members of the Union. Moreover, the liability of each respondent was not to extend beyond six months prior to the date of filing and service of the initial charge against it. Reimbursement is subject to a further limitation that the particular Employer's liability shall be for amounts paid only by its employees to the Union, so that one Company will not be liable for amounts paid by employees of another Company.[3]

In requiring such reimbursement the Board pointed out that the Union charged its members only nominal dues of $1.00 per month, while using the funds derived from the percentage fees, which were paid by members and non-members, to defray a large part of the Union's general expenses. In 1956, the Board continued, such general expenses included items such as *per capita* taxes and assessments paid to the Internationl and also travelling expenses of convention delegates and a member's death benefits, all of which totalled far more than the Union's maximum possible dues receipts and were plainly unrelated to the operation of the hiring hall or any other activities or services which could be deemed beneficial to non-members who paid the percentages.

As to the validity of any reimbursement provision at all we first observe that the operation of a hiring hall is

[3] The International and all Member-Companies of the Employer Associations were exempt of liability for back pay to Linnenberg in view of the fact that a finding of discrimination by them against him was barred by Section 10(b) of the Act.

not in and of itself illegal, *Local 357, International Bhd. of Teamsters v. NLRB*, 365 U.S. 667 (1961), so that some charge for such service cannot be said to be incident to an unfair labor practice and therefore illegal. The question is whether the discriminatory operation of the hall supports the order for reimbursement of service fees paid by non-Union employees, since they were properly found to be the subject of the discrimination. However, non-members were required to pay the fees only when successful in obtaining employment through the hiring hall. To the extent they were discriminated against by being passed over for employment they were not required to pay any fees. And while the discrimination against non-members may have reduced the value of the services they received, the value of those services was not so minimal that no charge therefor could be considered reasonable. Consequently if the fees exacted were on an equal basis with those paid by Union members for the same services the fees themselves could not be said to be due to discrimination against non-members.

In approving affirmative action required by the Board —here reimbursement—we must apply the test that such action have a remedial objective and not be punitive. It is limited to "means of removing or avoiding the consequences of violation where those consequences are of a kind to thwart the puposes of the Act." *Local 60, United Bhd. of Carpenters v. NLRB*, 365 U.S. 651, 655 (1961), citing *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 236 (1938). While the discriminatory manner of operating the hiring hall must cease, as the Board orders, it seems to us that the reimbursement portion of the order, to the extent it goes beyond placing non-members and

members in an equal position, goes too far. Discrimination in the exaction of the percentages occurred to the extent non-members were required to pay more than the service justified, that is, paid for activities of the Union of which they were not beneficiaries. Affirmative action which goes beyond remedying the discrimination cannot be said to effectuate the policies of the Act. It is true that but for the discrimination against non-members we must assume more of that group would have secured employment and, therefore, have earned a greater amount of wages. But reimbursement of service fees is not sufficiently related to making whole non-members who were discriminatorily denied employment to justify reimbursement as a means of remedying their failure to obtain employment.

The test in this case is not whether non-members were coerced into paying the service fees, which was the test applied to a reimbursement order in *Local 60, United Bhd. of Carpenters*, 365 U.S. 651 (1961). Such coercion as is incident to the operation of a hiring hall is not an unfair labor practice. Accordingly a service fee paid as an expense of conducting such a hiring method is not an exaction which must be refunded because coerced. The test here, as we have said: is whether a greater financial burden was placed upon non-members than the service rendered justified, a burden not placed upon Union members for the same service. The appropriate remedy, then, is to remedy the inequality borne by non-members. Accordingly, we take a course similar to that adopted in *Local 138, International Union of Operating Eng'rs v. NLRB*, 321 F.2d 130, 135-36 (2d Cir. 1963), and shall remand the cases to the Board to determine such proportion of the

fees paid as was reasonably related to the service provided by the Union, having in mind the cost to the Union of providing the services.[4]

Since the Employers participated in the discriminatory operation of the hiring hall they are properly made accountable jointly and severally with the labor organizations for any refunds required under the modified standard we adopt. See *NLRB v. United States Steel Corp.*, 278 F.2d 896, 898 (1960), *cert. denied*, 366 U.S. 908, 909 (1961). That they did participate is clear from the finding that the discriminatory hiring system was effectuated in part through the knowing cooperation of the Employers' own hiring supervisors who for the most part were union men themselves and generally knew which of the hiring hall applicants were fellow union members. The Board found that these supervisors, who as union members were bound by the terms of the International's Constitution, followed that Constitution's requirement that preference in job referrals be given to union men in the operation of all union hiring halls.[5] This finding is supported by the terms of the original hiring hall agreement

[4] We note that the Second Circuit in its opinion in **Local 138, International Union of Operating Eng'rs, supra**, suggested that "a union might under proper accounting procedures include in the cost of operating a hiring hall some reasonable percentage of the union's general expenses . . ." See also **NLRB v. General Motors**, 373 U.S. 734 (1963). However whether or not this should be done in the present situation is a matter for the Board itself to decide initially.

[5] This provision specifically required that when there were more jobs available than members of the local could handle preference for those jobs was to be given to members of sister locals. The Board found that implicit in this was the more basic requirement that all union men were to be given preference over nonunion men.

between the Union and the Employers, which expressly provided that preference in hiring was to be given to members of the Union and in the testimony of the hiring supervisors that although this provision was stricken in 1955 their hiring practices remained substantially unchanged. In addition to the above the Employers also facilitated the Union's collection of excessive service fees by paying their employees with two checks, one in the amount of the Union's service fee and the other for the balance of the employee's wages. These checks were handed over by the Employers to the Union, which handed the wage checks over to the employees after they had endorsed their service fee checks to the Union. These findings are supported by substantial evidence considering the record as a whole and provide a sufficient basis for the enforcement of the reimbursement order, as modified above, against the Employers as well as the Union.

Enforced in part, remanded in part for further proceedings consistent with this opinion.

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

These cases came on to be heard on the record from the National Labor Relations Board, and were argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this court that the order of the National Labor Relations Board on review in these cases is enforced in part and the cases are hereby remanded in part for further proceedings consistent with the opinion of this court.

It is FURTHER ORDERED by this court that the order of the Board shall be modified as indicated in the opinion of this court and, as so modified, will be enforced.

Pursuant to Rule 38(b) the National Labor Relations Board shall within 10 days hereof serve and file a proposed enforcement decree consistent with the opinion of this court.

Per Circuit Judge Fahy.

Dated: February 13, 1964.

DECREE OF THE UNITED STATES COURT OF APPEALS, District of Columbia

Before: Bazelon, Chief Judge, Edgerton, Senior Circuit Judge, and Fahy, Circuit Judge.

These consolidated cases came on to be heard upon petitions to review and to enforce an order of the National Labor Relations Board isued December 28, 1958, as amended October 22, 1962. The Court heard argument of respective counsel on October 23, 1963, and has considered the briefs and transcript of record filed in this cause. On February 13, 1964, the Court, being fully advised in the premises, handed down its opinion enforcing the Board's order in part, and remanding the cases in part for further proceedings consistent with the opinion of the Court. In conformity therewith, it is hereby

ORDERED, ADJUDGED AND DECREED that:

A. Houston Maritime Association, Inc.: Master Stevedores Association of Texas, and the individual Companies, listed on Appendix A herein, who are members of these Associations, their officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Performing, maintaining or giving effect to any hiring system, practice, or arrangement with Local 1351, Steamship Clerks and Checkers, International Longshoremen's Association, Independent, and International Longshoremen's Association, Independent, which unlawfully grants preference in employment to members of said Unions, or any other labor organization, or which unlawfully requires employees and applicants for employment, as a condition of employment, to designate Local 1351, or any other labor organization, as their bargaining agent, or unlawfully requires employees or applicants for employment to pay or agree to pay to said Local 1351, or any other labor organization, a percentage of their earnings derived from such employment.

(b) Encouraging membership in, or activities on behalf of, the above-named Unions, or any other labor organization, by giving preference in employment to members of such organizations, or in any other manner discriminating against employees or applicants for employment in regard to their hire or tenure of employment, or other terms or conditions of employment.

(c) Discriminating against G. R. Vinson and Frank A. Linnenberg because they are not members of said Local 1351 or because said individuals filed charges with the Board.[1]

(d) Unlawfully assisting or contributing support to said Local 1351 or any other labor organization of their employees.

[1] As the Member Companies were not found to have discriminated against Linnenberg, Section A(1)(c), Section A(2)(a) and Section C of this Decree relating to Linnenberg shall not apply to them.

(e) In any other manner, interfering with, restraining or coercing employees or applicants for employment in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act (hereinafter called the Act).

2. Take the following affirmative action which the Board has found will effectuate the policies of the Act:

(a) Notify G. R. Vinson, Frank A. Linnenberg, Local 1351, and the International Longshoremen's Association, Independent, in writing, that they have no objection to the employment of said Vinson and Linnenberg because of their membership or nonmembership in said labor organizations or because they have filed charges with the Board.

(b) Preserve and, upon request, make available to the Board, or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of back pay and other monies due, and the rights of employment under the terms of this Decree.

(c) Post at their respective offices in Houston, Texas, and other places of business in the Port of Houston and vicinity, copies of the notice attached hereto and marked "Appendix B." Copies of said notice, to be furnished by the Regional Director for the Twenty-third Region (Houston, Texas), shall, after being duly signed by an authorized representative of the Houston Maritime Association, Inc., of Master Stevedores Association of Texas, and of each Member Company, be posted by them immediately on receipt thereof and be maintained by them for 60 consecutive days in conspicuous places, including all places

where notices to employees are customarily posted. Reasonable steps shall be taken by said Associations and each Member Company thereof to insure that said notices are not altered, defaced, or covered by any other material.

(d) Post at the same places and under the same conditions as set forth in (c) above, as soon as they are forwarded by the aforesaid Regional Director, copies of the said Unions' notice herein marked "Appendix C."

(e) Mail to the aforesaid Regional Director signed copies of the notice attached hereto marked "Appendix B" for posting by Local 1351, International Longshoremen's Association, Ind., and C. B. Morrow, at their respective offices, hiring halls, and meeting halls, in places where notices to members and other persons using Local 1351's hiring hall are customarily posted. Copies of said notice, to be furnished by the said Regional Director, shall, after being duly signed by representatives of the said Associations and each Member Company thereof, be forthwith returned to the said Regional Director for such posting.

Notify the aforesaid Regional Director, in writing, within 10 days from the date of this Decree, as to what steps the said Associations and said Companies have taken to comply herewith.

B. Local 1351, Steamship Clerks and Checkers, International Longshoremen's Association, Independent, and International Longshoremen's Association, Independent, their officers, representatives, agents, including the C. B. Morrow, business agent of Local 1351, successors and assigns, shall:

1. Cease and desist from:

(a) Performing, maintaining or giving effect to any hiring system, practice or arrangement with Houston Maritime Association, Inc., or Master Stevedores Association of Texas, or any of the Member Companies thereof, which unlawfully grants preference in employment to members of the said Unions, or which unlawfully requires employees and applicants for employment as a condition of employment, to designate Local 1351 as their bargaining agent, or which unlawfully requires employees and applicants for employment to pay or agree to pay to Local 1351 a percentage of their earnings derived from such employment.

(b) Causing or attempting to cause said Associations, or any Member Company thereof, or any other employer, to deny employment to G. R. Vinson and Frank A. Linnenberg, or any other applicant for employment, in violations of Section 8(a)(3) of the Act, or otherwise discriminate against them because they are not members of the said Unions, or because they have filed charges with the Board.[2]

(c) In any other manner restraining or coercing employees or applicants for employment with said Companies, or any other employer, in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board has found will effectuate the policy of the Act:

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[2] As International was not found to have discriminated against Linnenberg, Section B(1)(b), Section B(2)(a) and Section C of this Decree relating to Linnenberg shall not apply to it.

(a) Notify G. R. Vinson, Frank A. Linnenberg, Houston Maritime Association, Inc., Master Stevedores Association of Texas, and each Member Company thereof, in writing, that above-named Unions have no objection to the employment by said Companies of said Vinson and Linnenberg, or any other employee or applicant for employment, because of their membership or nonmembership in the said Unions, or because they have filed charges with the Board.

(b) Preserve and, upon request, make available to the Board, or its agents, for examination and copying, all records and reports necessary to analyze the amounts of backpay and other monies due, and rights of employment under the terms of this Decree.

(c) Post at their respective offices, hiring halls and meeting halls, copies of the notice attached hereto and marked "Appendix C." Copies of said notice, to be furnished by the Regional Director for the Twenty-third Region (Houston, Texas), shall, after being duly signed by an authorized representative or representatives of the said Unions and by C. B. Morrow, be posted by them immediately on receipt thereof and be maintained by them for 60 consecutive days in conspicuous places, including all places where notices to members and other persons using Local 1351's hiring hall are customarily posted. Reasonable steps shall be taken by the said Unions to insure that said notices are not altered, defaced, or covered by any other material.

(d) Post at the same places and under the same conditions as set forth in (c) above, as soon as they are forwarded by the aforesaid Regional Director, copies of the

Association and Member Companies' notice herein marked "Appendix B."

(e) Mail to the aforesaid Regional Director signed copies of the notice attached hereto marked "Appendix C" for posting by Houston Maritime Association, Inc., Master Stevedores Association of Texas, and each Member Company thereof at their places of business in the Port of Houston, Texas, and vicinity, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the aforesaid Regional Director, shall, after being duly signed by a representative or representatives of the said Unions, and by C. B. Morrow, be forthwith returned to the said Regional Director for such posting.

(f) Notify the aforesaid Regional Director, in writing, within 10 days from the date of this Decree, as to what steps said Union and C. B. Morrow have taken to comply herewith.

C. Houston Maritime Association, Inc., Master Stevedores Association of Texas, and Member Companies thereof, listed in "Appendix A" herein, their officers, agents, successors and assigns; the Local 1351, Steamship Clerks and Checkers, International Longshoremen's Association, Independent, and the International Longshoremen's Association, Independent, their officers, representatives, agents, successors and assigns shall jointly and severally make whole G. R. Vinson and Frank A. Linnenberg for any loss of pay they may have suffered because of the discrimination against them in the manner and to the extent set forth in the Trial Examiner's Intermediate Report as modified by the Board's previous Decision herein, and as modified, by the Board's Supplemental Decision and Amended Order.

It is FURTHER ORDERED, ADJUDGED, AND DECREED that that portion of the Board's order which requires reimbursement to all present and former non-member employees who have unlawfully been required to pay Union service fees be, and it hereby is, remanded to the Board for further proceedings consistent with the Court's opinion.

Judge, United States Court of Appeals for the District of Columbia Circuit

Judge, United States Court of Appeals for the District of Columbia Circuit

Judge, United States Court of Appeals for the District of Columbia Circuit

APPENDIX A

MEMBERS OF HOUSTON MARITIME ASSOCIATION INC.

Biehl & Company, Houst Cotton Exchange Building, Houston, Texas

E. S. Binnings, Inc., Cotton Exchange Building, Houston, Texas

Bloomfield Steamship Company, Cotton Exchange Building, Houston, Texas

Fowler & McVitie, Inc., Cotton Exchange Building, Houston, Texas

Garcia Line Corporation, Cotton Exchange Building, Houston, Texas

Hansen, Tidemann & Dalton, Inc., Cotton Exchange Building, Houston, Texas

Isthmian Steamship Company, Cotton Exchange Building, Houston, Texas

Lykes Brothers Steamship Company, Inc., Cotton Exchange Building, Houston, Texas

Peter R. Phillips, Thomas Phillips, Catherine Elizabeth Wipprecht, a partnership d/b/a Wm. Parr & Co., Cotton Exchange Building, Houston, Texas

Rice, Kerr & Company, Inc., Cotton Exchange Building, Houston, Texas

States Marine Corporation of Delaware, Cotton Exchange Building, Houston, Texas

Strachan Shipping Company, Cotton Exchange Building, Houston, Texas

Texas Marine Transport Company, Inc., 507 State National Building, Houston, Texas

Texas Transport & Terminal Company, Inc., Cotton Exchange Building, Houston, Texas

Waterman Steamship Corporation, Cotton Exchange Building, Houston, Texas

MEMBERS OF MASTER STEVEDORES ASSOCIATION OF TEXAS - Houston Area

Atlantic & Gulf Stevedores, Inc., 5513 Clinton Drive, Houston, Texas

Canadian Gulf Line, Ltd., Post Office Box 5355, Houston, Texas

Gulf Stevedore Corporation, P. O. Box 1443, Houston, Texas

Liberty Stevedore Co., Inc., 508 Cotton Exchange Building, Houston, Texas
Southern Stevedoring Company, Post Office Box 2464, Houston, Texas
Southern Stevedoring & Contracting Company, Cotton Exchange Building, Houston, Texas
Strachan Shipping Company, Cotton Exchange Building, Houston, Texas
Suderman Stevedores, Inc., U.S. National Bank Building, Galveston, Texas
Texas Contracting Company, Cotton Exchange Building, Houston, Texas
Texas Star Stevedoring Company, Cotton Exchange Building, Houston, Texas
The Texports Stevedore Co., Inc., Cotton Exchange Building, Houston, Texas
United Stevedoring Corporation, Cotton Exchange Building, Houston, Texas
Young & Company of Houston, Cotton Exchange Building, Houston, Texas

APPENDIX B

NOTICE TO ALL EMPLOYEES PURSUANT TO A DECREE

of the United States Court of Appeals enforcing an order, as modified, of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT perform, maintain or give effect to any hiring system, practice or arrangement with

LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, IND., AND INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, IND., which unlawfully grants preference in employment to members of said Unions, or any other labor organization, or which unlawfully requires employees and applicants for employment, as a condition of employment, to designate LOCAL 1351, or any other labor organization, as a bargaining agent, or which unlawfully requires employees or applicants for employment to pay or agree to pay to said LOCAL 1351, or any other labor organization, a percentage of their earnings derived from such employment.

WE WILL NOT encourage membership in, or activities on behalf of, the above-named Unions, or any other labor organization, by giving preference in employment to members of such organizations, or in any other manner discriminate in regard to their hire or tenure of employment, or other terms or conditions of employment.

WE WILL NOT discriminate against G. R. VINSON and FRANK A. LINNENBERG because they are not members of said LOCAL 1351, or because they filed charges against us.

WE WILL NOT assist or contribute support to said LOCAL 1351 or any other labor organization of our employees.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees of applicants for employment in the exercise of the rights guaranteed in Section 7 of the Act.

WE WILL notify G. R. VINSON and FRANK A. LINNENBERG, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, IND., and LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, IND., in writing, that we have no objection to the employment of said VINSON AND LINNENBERG.

WE WILL make whole G. R. VINSON and FRANK A. LINNENBERG for any loss of pay they may have suffered because of the discrimination against them.

All our employees are free to become or remain or refrain from becoming or remaining members of any labor organization.

The provisions of this Notice relating to the discrimination against Linnenberg shall not be taken to apply to the individual Employer Companies.

Houston Maritime Association, Inc
(Employer)

Dated _____ By _____
(Representative) (Title)

Master Stevedores Association of Texas
(Employer)

Dated _____ By _____
(Representative) (Title)

_____
(Employer-Company)

Dated _____ By _____
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office (6617 Federal Office Bldg., 515 Rusk Ave., Houston 2, Texas, Tel. No. CApitol 8-0611, Ext. 296), if they have any question concerning this Notice or compliance with its provisions.

APPENDIX C

ALL MEMBERS OF LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INC., AND TO ALL CLERKS, CHECKERS, AND TIMEKEEPERS EMPLOYED IN THE PORT OF HOUSTON AND VICINITY

PURSUANT TO A DECREE

of the United Court of Appeals enforcing an order, as modified, of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT perform, maintain or give effect to any hiring system, practice or arrangement with HOUSTON MARITIME ASSOCIATION, INC., or MASTER STEVEDORES ASSOCIATION OF TEXAS, or any of the MEMBER COMPANIES thereof which unlawfully grants preference in employment to our members or which unlawfully requires employees or job applicants, as a condition of employ-

ment, to designate LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, IND., as their bargaining agent, and to agree to pay, or pay, to LOCAL 1351 a percentage of their earnings derived from such employment.

WE WILL NOT cause or attempt to cause said ASSOCIATIONS, or any MEMBER COMPANY thereof, or any other employer, to deny employment to G. R. VINSON and FRANK A. LINNENBERG, or any other applicant for employment, in violation of Section 8(a)(3) of the Act, or otherwise discriminate against them because they are not members of our organization or because they have filed charges against us.

WE WILL NOT in any other manner restrain or coerce employees or applicants for employment with said COMPANIES or any other employer in the exercise of the rights guaranteed in Section 7 of the Act.

WE WILL notify G. R. VINSON and FRANK A. LINNENBERG, HOUSTON MARITIME ASSOCIATION, INC., MASTER STEVEDORES ASSOCIATION OF TEXAS, and each MEMBER COMPANY thereof, in writing, that we have no objection to the employment by said COMPANIES of said VINSON and LINNENBERG, or any other employee or applicant for employment because of their membership or nonmembership in our organization or because they have filed charges against us.

WE WILL make whole G. R. VINSON and FRANK A. LINNENBERG for any loss of pay they have suffered because of the discrimination against them.

The provisions of this Notice relating to the discrimination against Linnenberg shall not be taken to apply to International Longshoremen's Association, Independent, and the provisions of this Notice relating to the payment of backpay shall not be taken to apply to C. B. Morrow.

International Longshoremen's Association, Ind.
(Labor Organization)

Dated_____ By_____
(Representative) (Title)

Local 1351, Steamship Clerks and Checkers International Longshoremen's Association, Ind.
(Labor Organization)

Dated_____ By_____
(Representative) (Title)

Dated_____ By C. B. MORROW
(Business Agent, Local 1351)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office (6617 Federal Office Bldg., 515 Rusk Ave., Houston 2, Texas, Tel. No. CApitol 8-0611, Ext. 296), if they have any question concerning this Notice or compliance with its provisions.

139 NLRB No. 9 D-4071
Houston, Texas

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR
RELATIONS BOARD

Case No. 39-CA-482

GALVESTON MARITIME ASSOCIATION, INC;
HOUSTON MARITIME ASSOCIATION, INC.;
MASTER STEVEDORES ASSOCIATION OF TEXAS

and

H. H. FIELD, An Individual

Case No. 39-CA-524

GALVESTON MARITIME ASSOCIATION, INC.;
HOUSTON MARITIME ASSOCIATION, INC.;
MASTER STEVEDORES ASSOCIATION OF TEXAS;
and the Individual Member Companies Listed in "APPENDIX A" and Attached Hereto

and

G. R. VINSON, An Individual

Case No. 39-CB-90

LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT; C. B. MORROW, BUSINESS AGENT; INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1665, INDEPENDENT; T. M. BENNETT, PRESIDENT; SOUTH ATLANTIC AND GULF COAST DISTRICT, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, RALPH MASSEY, PRESIDENT

and

H. H. FIELD, An Individual

Case No. 39-CB-124

LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT; C. B. MORROW, BUSINESS AGENT; AVENUE N CORPORATION; SOUTH ATLANTIC AND GULF COAST DISTRICT, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT; INTERNATIONAL LONGSHOREMEN'S ASSOCIATION INDEPENDENT

and

G. R. VINSON, An Individual

SUPPLEMENTAL DECISION AND AMENDED ORDER

On December 29, 1958, the Board issued its Decision and Order in the above-entitled proceeding[1] in which the Board found, among other findings of unfair labor practices, that the Respondents violated the Act by maintaining in effect an exclusive hiring hall arrangement which failed to conform to the standards set forth by the Board in *Mountain Pacific*.[2] The Board was of the opinion that absent the safeguards specified in *Mountain Pacific*, an agreement which delegates exclusive hiring control to a union unlawfully encourages membership in the union and thus constitutes a *per se* violation of the Act. However, the Board further noted that, apart from the Respondents' failure to provide for such safeguards, the Respondents had actually imposed discriminatory conditions of employment by maintaining unlawful conditions of employment,

[1] 122 NLRB 692.

[2] Mountain Pacific Chapter of the Associated General Contractors, Inc., 119 NLRB 883.

including a practice of preferential hiring for members of Respondent Unions.

Thereafter, the Board sought enforcement of its Order before the United States Court of Appeals for the Fifth Circuit. Before the Board's petition was heard, the Board moved the Court for leave to withdraw its petition for enforcement and to have the case remanded to the Board for reconsideration in the light of the Supreme Court's supervening decisions in *Local 357, IBT,*[3] *and Carpenters' Local 60.*[4] The Court granted the Board's motion without prejudice.

In *Local 357*, the Supreme Court rejected the Board's *Mountain Pacific* doctrine and held that the grant of exclusive power to a union to refer applicants for employment does not by itself justify an inference of illegality. In view of the Supreme Court's holding, we now hold that the Respondent Associations and the Respondent Unions did not, by virtue of the delegation alone, respectively violate Section 8(a)(1)(2) and (3) and Section 8(b)(2) and (1)(A) of the Act.

But nothing in the Supreme Court's opinion in *Local 357* requires modification of our earlier findings, based on evidence other than the mere fact of a delegation of an exclusive power to hire, that the Respondent Associations and their Member Companies violated Section 8(a)(1)(2) and (3) by being parties to a hiring arrangement with Respondent Local 1351 which gave preference in

[3] **Local 357, International Brotherhood of Teamsters v. N.L.R.B.**, 365 U.S. 667.

[4] **Local 60, United Brotherhood of Carpenters v. N.L.R.B.**, 365 U.S. 651.

employment to members of said Local and its sister locals[5] and which required job applicants as a condition of employment to designate Local 1351 as their bargaining representative and pay it a percentage of their wages; by facilitating Local 1351's collection of such percentages; and by discriminating against job applicants Linnenberg and Vinson because they were not members of Local 1351 and because they had filed unfair labor practice charges against the Respondents. Nor are we required by the Supreme Court decision to modify our findings that Respondent Unions and Local 1351's business agent Morrow violated Section 8(b)(2) and (1)(A) of the Act by maintaining and operating an unlawful hiring hall and by causing the employers to discriminate against job applicants Linnenberg and Vinson for the reasons set forth above.

In our earlier decision herein we found, in the circumstances of these cases, that it would effectuate the policy of the Act to require the Respondent Associations and their Member Companies to withdraw recognition from Respondent Local 1351 until Local 1351 had demonstrated its exclusive majority status pursuant to a Board-conducted election among Respondent Companies' employees. We also found, on the basis of a then reaffirmation of precedent,[6] that because of the operation of the unlawful hiring hall, employees were coerced to become and remain union members and thus become obligated to

[5] Cf. Teamsters and Allied Workers Hawaii Local 996 (Twentieth Century-Fox Film Corporation), 131 NLRB 157.

[6] See United Association of Journeymen and Apprentices of Plumbing and Pipefitting Industries (J. S. Brown—E. E. Olds Plumbing and Heating Corporation), 115 NLRB 594.

pay initiation fees, dues and other union obligations, including percentage fees, and that it was essential, in order to expunge the effects of these exactions, to order their refund.

In *Local 60, supra*, the Supreme Court held that the Board lacked authority to order a refund of dues and fees in the absence of evidence that the "monies" thus collected were coerced by unfair labor practices. In the circumstances of these cases, we now modify that portion of our Order relating to the refund of union initiation fees, dues, and other similar union obligations. The same consideration, however, as we pointed out in *Houston Maritime*,[7] does not apply to the refund of percentages.

However, since the present Board members take different positions respecting the exaction of percentage fees to meet the costs of operating the Union hiring hall in the circumstances of these cases, we are modifying our previous Order to reflect such positions.[8] Members Rodgers and Leedom would find, as they did in *Houston Maritime*, that in the light of the discriminatory practices engaged herein by the Respondents, the requirement that all employees pay a percentage of their wages as a condition of employment was, in itself, unlawful discrimination which tended to encourage nonmembers to join the Union and those who were members to remain so. They, therefore, would refund the percentages exacted from members and nonmembers alike. Members Fanning and Brown believe that a distinction exists here, as in the *Houston Maritime*

[7] **Houston Maritime Association, Inc.**, 136 NLRB No. 97. Chairman McCulloch's dissenting position as to the "percentages" involved in the **Houston Maritime** case is distinguished below.

[8] See **Houston Maritime Association, Inc., supra.**

case, in the treatment of union and nonunion job applicants. While they do not consider it unlawful for a union operating a hiring hall to charge job applicants a reasonable fee for referral services, they regard it as quite another thing for a union to require nonunion applicants to pay a service fee for the support of an *unlawful* hiring hall, which accords nonmembers the dubious privilege of being assigned to the bottom of the referral list because they lack union membership. Because of the discrimination practiced here against nonunion members in job referrals, Members Fanning and Brown consider the imposition of a percentage fee in such circumstances discriminatory as to nonmembers. Chairman McCulloch joins Members Fanning and Brown in finding that the exaction of the percentage, or service, fee was unlawful so far as nonmembers were concerned, although he deemed the evidence in *Houston Maritime* insufficient to support such a finding there. In both cases, the Chairman points out, the service fee in question was a percentage of actual earnings; hence, a nonunion employee who was wrongfully denied his fair share of job referrals paid correspondingly lesser fees. Thus, it could not be said on that ground alone that the nonunion employee had been discriminated against. In the present case, however, unlike *Houston Maritime*, the record shows that Local 1351 charged its members only nominal dues of $1.00 per month while using the funds derived from the percentage fee to defray a large part of its general expenses. In 1956, the latter included items (e.g., *per capita* taxes and assessments paid to the ILA International and District, travelling expenses of convention delegates and a "member's death benefit") which totaled far more than the Local's maximum possible dues

receipts and were plainly unrelated to the operation of the hiring hall or any other activities or services which could be deemed beneficial to nonmembers.[9] It thus follows that a majority of the Board is holding, on the question of the refund of monies unlawfully exacted as percentages, that, in the circumstances of these cases, only by exacting a service fee as a percentage of wages from *nonmember* job applicants as a condition of employment, did the Respondent Associations and their Member Companies violate Section 8(a)(1)(2) and (3), and the Respondent Unions violate Section 8(b)(1)(A) and (2) of the Act.[10]

The Remedy

Having duly considered our findings herein in the light of the pertinent Supreme Court decisions and having concluded that the Respondents have engaged in certain unfair labor practices, we shall direct them to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act as set forth in our prior Decision and Order as herein modified. We have found that the Respondents engaged in unlawful conduct by, among other things, requiring nonunion employees to pay Respondent Local a percentage of their earnings as the price of securing and retaining employment.

[9] Up to the middle of 1955, moreover, the members of Local 1351 paid service fees of only 2% of their earnings, while the nonmembers paid 5%; and in November of that year the members alone received certain lump sum payments in the nature of rebates.

[10] The Board is unanimous in reversing its previous Decision herein insofar as it implied that Respondent Local may not, in any circumstances, charge member or nonmember job applicants a reasonable referral fee consisting of a percentage of wages.

Since a majority of the Board has voted in favor of refunding percentages exacted from nonmembers only, we shall amend our previous Order to provide that the Respondents jointly and severally refund such monies to present and former nonmember employees beginning with a date 6 months prior to the date of the filing and service of the initial charge herein against these Respondents and extending to all monies thereafter paid which have not heretofore been refunded.

In agreement with the Trial Examiner, we shall order that employees G. R. Vinson and Frank A. Linnenberg be made whole for any loss of pay suffered by reason of the discrimination against them in the manner and to the extent set forth in the Intermediate Report as modified in our prior Decision and Order. In view of the fact that a finding that Respondent Member Companies discriminated against Linnenberg is barred by Section 10(b) of the Act, we shall not impose any backpay liability on them as to Linnenberg.

The Respondents' liability for the refund of monies due under our previous Order, as herein modified, is, of course, subject to limitations set forth in our earlier decision. Thus, a Member Company's liability shall be limited to the monies paid by its employees to Respondent Local 1351 so that one Member Company shall not be liable for the refund of monies paid by the employees of another Member Company. Furthermore, the period of liability for each Respondent shall begin 6 months before the date of the filing and service of the initial charge against such Respondent and shall extend to all monies thereafter paid which have not heretofore been refunded. All Member Companies shall be exempt from any liability for back-

pay to Linnenberg in view of the fact that a finding that the Member Companies discriminated against Linnenberg is barred by Section 10(b) of the Act. Furthermore, Respondent International's liability for backpay and the refund of percentages for the period from the date of the Intermediate Report to the date of the original Decision and Order herein shall be abated as the Trial Examiner dismissed the complaint against the International."

AMENDED ORDER

Upon the entire record in these cases, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

A. The Respondents, Houston Maritime Association, Inc., Houston, Texas; Master Stevedores Association of Texas, Houston, Texas, and the individual Respondent Companies, listed on Appendix A herein, who are members of these Associations, their officers, agents, successors and assigns, shall:

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[1] Although the Board's practice with respect to the abatement of backpay and other monetary awards has been changed since the issuance of our previous decision herein (See **A.P.W. Products Co.**, 131 NLRB No. 7, Members Rodgers and Leedom dissenting), in view of the fact that the present cases are now here before us on our own request for reconsideration, we think this is a circumstance that does not call for a modification of our previous decision abating the Respondent International's liability for backpay and the refund of percentages (the refund of initiation fees, dues and other like monies having now been eliminated) for the period from June 6, 1957, the date of the Intermediate Report dismissing the complaint against the Respondent International, to December 24, 1958, the date of our original Decision and Order.

1. Cease and desist from:

(a) Performing, maintaining or giving effect to any hiring system, practice, or arrangement with Local 1351, Steamship Clerks and Checkers, International Longshoremen's Association, Independent, and International Longshoremen's Association, Independent, which unlawfully grants preference in employment to members of said Unions, or any other labor organization, or which unlawfully requires employees and applicants for employment, as a condition of employment, to designate Local 1351, or any other labor organization, as their bargaining agent, or unlawfully requires employees or applicants for employment to pay or agree to pay to said Local 1351, or any other labor organization, a percentage of their earnings derived from such employment.

(b) Encouraging membership in, or activities on behalf of, the above-named Unions, or any other labor organization, by giving preference in employment to members of such organizations, or in any other manner discriminating against employees or applicants for employment in regard to their hire or tenure of employment, or other terms or conditions of employment.

(c) Discriminating against G. R. Vinson and Frank A. Linnenberg because they are not members of said Local 1351 or because said individuals filed charges against Respondent.[12]

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[12] As the Member Companies were not found to have discriminated against Linnenberg, Section A(1)(c) and Section A(2)(a) of this Amended Order relating to Linnenberg shall not apply to them.

(d) Unlawfully assisting or contributing support to said Local 1351 or any other labor organization of their employees.

(e) In any other manner, interfering with, restraining or coercing employees or applicants for employment in the exercise of the rights guaranteed in Section 7 of the Act."

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Notify G. R. Vinson, Frank A. Linnenberg, the Respondent Local 1351, and the Respondent International Longshoremen's Association, Independent, in writing, that they have no objection to the employment of said Vinson and Linnenberg because of their membership or nonmembership in said labor organizations or because they have filed charges against the Respondents.

(b) Preserve and, upon request, make available to the Board, or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay and other monies due, and the rights of employment under the terms of this Amended Order.

(c) Post at their respective offices in Houston, Texas, and other places of business in the Port of Houston and vicinity, copies of the notice attached hereto and marked "Appendix B."[13] Copies of said notice, to be furnished by

[13] In the event this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order," the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order"

the Regional Director for the Twenty-third Region, shall, after being duly signed by an authorized representative of the Respondent Houston Maritime Association, Inc., of Respondent Master Stevedores Association of Texas, and of each Respondent Company, be posted by them immediately on receipt thereof and be maintained by them for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by said Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(d) Post at the same places and under the same conditions as set forth in (c) above, as soon as they are forwarded by the Regional Director, copies of the Respondent Unions' notice herein marked "Appendix C."

(e) Mail to the Regional Director for the Twenty-third Region signed copies of the notice attached hereto marked "Appendix B" for posting by Respondent Local 1351, Respondent International Longshoremen's Association, Ind., and Respondent C. B. Morrow, at their respective offices, hiring halls, and meeting halls, in places where notices to members and other persons using Local 1351's hiring hall are customarily posted. Copies of said notice, to be furnished by the Regional Director, shall, after being duly signed by representatives of the Respondent Associations and each Member Company thereof, be forthwith returned to the Regional Director for such posting.

Notify the Regional Director for the Twenty-third Region, in writing, within 10 days from the date of this Amended Order, as to what steps the Respondent Associations and Respondent Companies have taken to comply herewith.

B. Respondent Local 1351, Steamship Clerks and Checkers, International Longshoremen's Association, Independent, and Respondent International Longshoremen's Association, Independent, their officers, representatives, agents, including the Respondent C. B. Morrow, business agent of Local 1351, successors and assigns, shall:

1. Cease and desist from:

(a) Performing, maintaining or giving effect to any hiring system, practice or arrangement with Houston Maritime Association, Inc., or Master Stevedores Association of Texas, or any of the Member Companies thereof, which unlawfully grants preference in employment to members of Respondent Unions, or which unlawfully requires employees and applicants for employment, as a condition of employment, to designate Respondent Local 1351 as their bargaining agent or which unlawfully requires employees and applicants for employment to pay or agree to pay to Respondent Local 1351 a percentage of their earnings derived from such employment.

(b) Causing or attempting to cause said Associations, or any Member Company thereof, or any other employer, to deny employment to G. R. Vinson and Frank A. Linnenberg, or any other applicant for employment, in violation of Section 8(a)(3) of the Act, or otherwise discriminate against them because they are not members of Respondent Unions, or because they have filed charges against the Respondents.[14]

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[14] As Respondent International was not found to have discriminated against Linnenberg, Section II(1)(b) and Section II (2)(c) of this Amended Order relating to Linnenberg shall not apply to it

(c) In any other manner restraining or coercing employees or applicants for employment with Respondent Companies, or any other employer, in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policy of the Act:

(a) Notify G. R. Vinson, Frank A. Linnenberg, the Respondents Houston Maritime Association, Inc., Master Stevedores Association of Texas, and each Member Company thereof, in writing, that Respondent Unions have no objection to the employment by said Respondent Companies of said Vinson and Linnenberg, or any other employee or applicant for employment, because of their membership or nonmembership in the Respondent Unions, or because they have filed charges against the Respondents.

(b) Preserve and, upon request, make available to the Board, or its agents, for examination, and copying, all records and reports necessary to analyze the amounts of backpay and other monies due, and rights of employment under the terms of this Amended Order.

(c) Post at their respective offices, hiring halls and meeting halls, copies of the notice attached hereto and marked "Appendix C."[15] Copies of said notice, to be furnished by the Regional Director for the Twenty-third Region shall, after being duly signed by an authorized representative or representatives of Respondent Unions and by Respondent C. B. Morrow, be posted by them

[15] In the event this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order," the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order"

immediately on receipt thereof and be maintained by them for 60 consecutive days in conspicuous places, including all places where notices to members and other persons using Respondent Local 1351's hiring hall are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(d) Post at the same places and under the same conditions as set forth in (c) above, as soon as they are forwarded by the Regional Director, copies of the Respondent Association and Member Companies' notice herein marked "Appendix B."

(e) Mail to the Regional Director for the Twenty-third Region signed copies of the notice attached hereto marked "Appendix C" for posting by Respondents Houston Maritime Association, Inc., Master Stevedores Association of Texas, and each Member Company thereof at their places of business in the Port of Houston, Texas, and vicinity, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director, shall, after being duly signed by a representative or representatives of Respondent Unions, and by Respondent C. B. Morrow, be forthwith returned to the Regional Director for such posting.

(f) Notify the Regional Director for the Twenty-third Region, in writing, within 10 days from the date of this Amended Order, as to what steps Respondent Unions and Respondent C. B. Morrow have taken to comply herewith.

C. The Respondents, Houston Maritime Association, Inc., Master Stevedores Association of Texas, and Member Companies thereof, listed in "Appendix A" herein, their

officers, agents, successors and assigns; the Respondent Local 1351, Steamship Clerks and Checkers, International Longshoremen's Association, Independent, and the Respondent International Longshoremen's Association, Independent; their officers, representatives, agents, successors and assigns shall jointly and severally make whole G. R. Vinson and Frank A. Linnenberg for any loss of pay they may have suffered because of the discrimination against them in the manner and to the extent set forth in the Intermediate Report as modified by the Board's previous Decision herein, and as modified, by the Board's present Supplemental Decision and Amended Order, and shall jointly and severally reimburse all present and former employees who have unlawfully been required to pay a percentage of their wages to Respondent Local 1351 in the manner and to the extent set forth in the Board's Supplemental Decision and Amended Order entitled "The Remedy."

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges that the Respondents Galveston Maritime Association, Inc.; International Longshoremen's Association, Local 1665, Independent, and its President, T. M. Bennett; South Atlantic & Gulf Coast District, International Longshoremen's Association, Independent, and its President, Ralph Massey; and Avenue N Corporation, committed violations of the Act; and insofar as it alleges that the individual Respondent Member Companies and Respondent International Longshoremen's Association, Independent, have unlawfully discriminated against Frank A. Linnenberg; and insofar as it alleges unfair labor practices not found herein.

Dated, Washington, D. C. October 22, 1962.

Frank W. McCulloch, Chairman

Philip Ray Rodgers, Member

Boyd Leedom, Member

John H. Fanning, Member

Gerald A. Brown, Member

NATIONAL LABOR
RELATIONS BOARD

(SEAL)

APPENDIX A

MEMBERS OF HOUSTON MARITIME ASSOCIATION INC.

Biehl & Company, Houston, Cotton Exchange Building, Houston, Texas

E. S. Binnings, Inc., Cotton Exchange Building, Houston, Texas

Bloomfield Steamship Company, Cotton Exchange Building, Houston, Texas

Fowler & McVitie, Inc., Cotton Exchange Building, Houston, Texas

Garcia Line Corporation, Cotton Exchange Building, Houston, Texas

Hansen, Tidemann & Dalton, Inc., Cotton Exchange Building, Houston, Texas

Isthmian Steamship Company, Cotton Exchange Building, Houston, Texas

Lykes Brothers Steamship Company, Inc., Cotton Exchange Building, Houston, Texas

Peter R. Phillips, Thomas Phillips, Catherine Elizabeth Wipprecht, a partnership d/b/a Wm. Parr & Co., Cotton Exchange Building, Houston, Texas

Rice, Kerr & Company, Inc., Cotton Exchange Building, Houston, Texas

States Marine Corporation of Delaware, Cotton Exchange Building, Houston, Texas

Strachan Shipping Company, Cotton Exchange Building, Houston, Texas

Texas Marine Transport Company, Inc., 507 State National Building, Houston, Texas

Texas Transport & Terminal Company, Inc., Cotton Exchange Building, Houston, Texas

Waterman Steamship Corporation, Cotton Exchange Building, Houston, Texas

MEMBERS OF MASTER STEVEDORES ASSOCIATION OF TEXAS - Houston Area

Atlantic & Gulf Stevedores, Inc., 5513 Clinton Drive, Houston, Texas

Canadian Gulf Line, Ltd., Post Office Box 5355, Houston, Texas

Gulf Stevedore Corporation, P. O. Box 1443, Houston, Texas

Liberty Stevedore Co., Inc., 508 Cotton Exchange Building, Houston, Texas

Southern Stevedoring Company, Post Office Box 2464, Houston, Texas

Southern Stevedoring & Contracting Company, Cotton Exchange Building, Houston, Texas

Strachan Shipping Company, Cotton Exchange Building, Houston, Texas

Southern Stevedores, Inc., U.S. National Bank Building, Galveston, Texas

Texas Contracting Company, Cotton Exchange Building, Houston, Texas

Texas Star Stevedoring Company, Cotton Exchange Building, Houston, Texas

The Texports Stevedore Co., Inc., Cotton Exchange Building, Houston, Texas

United Stevedoring Corporation, Cotton Exchange Building, Houston, Texas

Young & Company of Houston, Cotton Exchange Building, Houston, Texas

APPENDIX B

NOTICE TO ALL EMPLOYEES PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT perform, maintain or give effect to any hiring system, practice or arrangement with LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS INTERNATIONAL LONGSHOREMEN'S ASSOCIATION IND., AND INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, IND., which unlawfully grants preference in employ-

ment to members of said Unions, or any other labor organization, or which unlawfully requires employees and applicants for employment, as a condition of employment, to designate LOCAL 1351, or any other labor organization, as a bargaining agent, or which unlawfully requires employees or applicants for employment to pay or agree to pay to said LOCAL 1351, or any other labor organization, a percentage of their earnings derived from such employment.

WE WILL NOT encourage membership in, or activities on behalf of, the above-named Unions, or any other labor organization, by giving preference in employment to members of such organizations, or in any other manner discriminate in regard to their hire or tenure of employment, or other terms or conditions of employment.

WE WILL NOT discriminate against G. R. VINSON and FRANK A. LINNENBERG because they are not members of said LOCAL 1351, or because they filed charges against us.

WE WILL NOT assist or contribute support to said LOCAL 1351 or any other organization of our employees.

WE WILL NOT in any other manner interfere with, restrain or coerce our employes or applicants for employment in the exercise of the rights guaranteed in Section 7 of the Act.

WE WILL notify G. R. VINSON and FRANK A. LINNENBERG, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, IND., and LOCAL

1351, STEAMSHIP CLERKS AND CHECKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, IND., in writing, that we have no objection to the employment of said VINSON and LINNENBERG.

WE WILL make whole G. R. VINSON and FRANK A. LINNENBERG for any loss of pay they may have suffered because of the discrimination against them.

WE WILL reimburse all of our present and former employees who have been unlawfully required to pay a percentage of their wages to said LOCAL 1351.

All our employees are free to become or remain or refrain from becoming or remaining members of any labor organization.

The provisions of this Notice relating to the discrimination against Linnenberg shall not be taken to apply to the individual Employer Companies.

Houston Maritime Association, Inc.
(Employer)

Dated _____ By _____
(Representative) (Title)

Master Stevedores Association of Texas
(Employer)

Dated _____ By _____
(Representative) (Title)

_____
(Employer-Company)

Dated _____ By _____
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, (661) Federal Office Bldg., 515 Rusk Ave., Houston 2, Texas, Tel. No. CApitol 8-0611, Ext. 296), if they have any question concerning this Notice or compliance with its provisions.

APPENDIX C

NOTICE TO ALL MEMBERS OF LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, IND., AND TO ALL CLERKS, CHECKERS, AND TIMEKEEPERS EMPLOYED IN THE PORT OF HOUSTON AND VICINITY

PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT perform, maintain or give effect to any hiring system, practice or arrangement with HOUSTON MARITIME ASSOCIATION, INC., or MASTER STEVEDORES ASSOCIATION OF TEXAS, or any of the MEMBER COMPANIES thereof which unlawfully grants preference in employment to our members or which unlawfully requires em-

ployees or job applicants, as a condition of employment, to designate LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, IND., as their bargaining agent, and to agree to pay, or pay, to LOCAL 1351 a percentage of their earnings derived from such employment.

WE WILL NOT cause or attempt to cause said ASSOCIATIONS, or any MEMBER COMPANY thereof, or any other employer, to deny employment to G. R. VINSON and FRANK A. LINNENBERG, or any other applicant for employment, in violation of Section 8(a)(3) of the Act, or otherwise discriminate against them because they are not members of our organization or because they have filed charges against us.

WE WILL NOT in any other manner restrain or coerce employees or applicants for employment with said COMPANIES or any other employer in the exercise of the rights guaranteed in Section 7 of the Act.

WE WILL notify G. R. VINSON and FRANK A. LINNENBERG, HOUSTON MARITIME ASSOCIATION, INC., MASTER STEVEDORES ASSOCIATION OF TEXAS, and each MEMBER COMPANY thereof, in writing, that we have no objection to the employment by said COMPANIES of said VINSON and LINNENBERG, or any other employee or applicant for employment because of their membership or nonmembership in our organization or because they have filed charges against us.

WE WILL make whole G. R. VINSON and FRANK A. LINNENBERG for any loss of pay they have suf-

fered because of the discrimination against them. WE WILL reimburse all present and former employees who have been unlawfully required by us to pay a percentage of their wages to LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT.

The provisions of this Notice relating to the discrimination against Linnenberg shall not be taken to apply to International Longshoremen's Association, Independent, and the provisions of this Notice relating to the payment of backpay and the reimbursement of percentages shall not be taken to apply to C. B. Morrow.

International Longshoremen's Association, Ind.
(Labor Organization)

Dated_____ By_____
(Representative) (Title)

Local 1351, Steamship Clerks and Checkers, International Longshoremen's Association, Ind.
(Labor Organization)

Dated_____ By_____
(Representative) (Title)

Dated_____ By C. B. MORROW
(Business Agent, Local 1351)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, (6617 Federal Office Bldg., 515 Rusk Ave., Houston 2, Texas, Tel. No. CApitol 8-0611, Ext. 296), if they have any question concerning this Notice or compliance with its provisions.

(Caption Omitted)

ORDER CORRECTING SUPPLEMENTAL DECISION AND AMENDED ORDER

On October 22, 1962, the Board issued a Supplemental Decision and Amended Order[1] in the above-entitled proceeding in which a typographical error appears.

IT IS HEREBY ORDERED that the said Supplemental Decision and Amended Order be, and it hereby is, corrected by changing the citation in footnote 7, page 3, to read "136 NLRB No. 99."

IT IS FURTHER ORDERED that the Supplemental Decision and Amended Order, as printed, shall appear as hereby corrected.

Dated, Washington, D. C., October 25, 1962.

By direction of the Board:

George A. Leet

Associate Executive Secretary

[1] 139 NLRB No. 9.

121 NLRB No. 83 D-460
Houston, Texas

DECISION AND ORDER

(Number and Title Omitted)

On June 6, 1957, Trial Examiner Albert P. Wheatley issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents Houston Maritime Association, Inc., Master Stevedores Association of Texas, the individual Member Companies of these Associations, and the Respondents Local 1351, Steamship Clerks and Checkers, International Longshoremen's Association, Independent, and its business agent, C. B. Morrow, had engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the above-named Respondents had not engaged in certain other unfair labor practices as alleged in the complaint, and that other named Respondents had not engaged in any unfair labor practices, and recommended that the allegations of the complaint to such extent be dismissed. Thereafter, the General Counsel, the Respondents Local 1351 and C. B. Morrow, and the Respondent Associations and individual Member-Companies thereof, filed exceptions to the Intermediate Report and supporting briefs.[1]

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error

[1] As the exceptions and briefs adequately present the issues and position of the parties herein, the Respondent, Local 1351's request for oral argument is hereby denied.

was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner to the extent that they are consistent with our decision, and with the modifications and additions hereinafter indicated.

1. We agree with the Trial Examiner that the Respondents Houston Maritime Association, Master Stevedores Association, and their Member-Companies, violated Section 8 (a) (1), (2), and (3) of the Act, and that the Respondent Local 1351 violated Section 8 (b) (1) (A) and (2) of the Act, by maintaining an exclusive hiring arrangement whereby members of Local 1351 and sister locals are given preference in employment over nonmembers and whereby other discriminatory conditions of employment are imposed.[2]

It is undisputed that the Respondent Companies utilized Local 1351's hiring hall as the sole and exclusive source for securing their clerks, checkers and other personnel in the Port of Houston. It is also clear that no employee in these classifications could be hired except through Local 1351's hall.[3] In administering this hiring hall, Local 1351 main-

[2] We find that, in accordance with Board Policy, the Regional Director properly vacated the Settlement Agreement involved herein. However, like the Trial Examiner, we find it unnecessary to invalidate the illegal provision of the earlier contract between the parties because the alleged illegal provision has already been deleted from the contract and because the remedial order hereafter directed proscribes giving effect to any existing contract or arrangement between the parties.

[3] Local 1351's General Working Rules prohibit members from soliciting employment or leaving their jobs to accept work at another dock.

tains a list of applicants available for employment. This list designates those who are members of the Union and those who are not. Whenever the companies require any men, their chief clerks, who concededly are supervisory employees with authority to hire and discharge, telephone the Local's business agent. The business agent, in response, reads to the chief clerks the list of available employees from which the latter select their employees.[4] Although it appears that the business agent normally does not specify which applicants are union or nonunion members, it is apparent that this is unnecessary as practically all, if not all, chief clerks are union members acquainted with the membership. Indeed, every chief clerk who testified admitted this. The evidence also shows that many of the chief clerks serve as officials of the Local and on its committees, including the contract negotiating and grievance committees which bargain with the Respondent Associations. Furthermore, as later discussed, chief clerks, like the rank-and-file employees, are required, as a condition of employment, to designate Local 1351 as their bargaining representative and to pay a percentage of their wages.

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[4] Before Local 1351 abandoned its practice of requiring employers to pay clerk's wages to checkers called by name, some employers when ordering checkers allowed the business agent to make the selection.

All chief clerks who testified conceded that the practice of employee selection had not changed after the unfair labor practice charges filed herein were settled by agreement. The only change made by the Respondent Local was from a system of posting names of available nonunion employees on a blackboard in plain view of all persons waiting for job assignments, to the system of listing their names on scratch pads kept by the business agent in his private office and not available for inspection. At all times the names of union members were also kept by the business agent in his private office, and not available for inspection.

Under the International's Constitution, Local 1351 is obligated to give preference in employment to members of a sister local when there are more jobs than its members can handle.[5] Obviously, this provision contemplates that the Local would give first preference to its own members over other applicants. Indeed, such policy is revealed in the parties' earlier contracts. In addition, the Local's business agent is required by its Constitution to see that the Local's rules are observed.[6] In these circumstances, there can be little doubt that the chief clerks as members subject to the Local's discipline and as union officials would not disregard the Local's constitutionally-imposed policy of preferential hiring.

That this preferential hiring policy was effectuated is established by the record. According to the credited testimony of employee Vinson, on a number of occasions in 1955 and up to July 1956, when the witness stopped reporting to the hiring hall for work, Business Agent Morrow passed over nonunion men waiting for jobs in favor of men from Local 1351's sister locals. Moreover, there is other evidence in the record that on the average members of Local 1351 earned more money than nonmembers, were

[5] The Constitution and Rules of Order of the International Longshoremen's Association, Independent, as amended in July 1955, states in Article XI, Section 5: "Where two or more Locals exist in the same Port and one Local has more work than its membership can take care of, said Local shall give preference to members of the other Locals in the performance of such extra work."

[6] Article II of Local 1351's Constitution reads as follows: "Business Agent".

He shall see that the rules of the Union are lived up to by the members, and report all violations in payment of dues, fines and percentage to the Executive Board.

employed for longer periods of time, and usually were given the higher paying clerks' job whereas the nonunion men were usually given the lower paying checker's jobs.[7] However, no evidence was adduced to show that the union members were demonstrably better qualified for the work than the nonunion members. Finally, as hereinafter found, Local 1351 actually discriminatorily denied referral to Vinson and Linnenberg.

The foregoing evidence persuades us that the preferential hiring system originally provided for in the Respondents' earlier contracts has actually continued in operation after the Respondents ostensibly deleted these provisions from their contracts. Such an exclusive preferential hiring system is plainly prohibited by the Act.[8]

Apart from the preferential hiring aspect of the Respondents hiring arrangement, we find, as did the Trial Examiner, that the referral system is unlawful by reason of the conditions imposed upon applicants in order to secure and retain employment. Thus, as discussed in the Intermediate Report, it is undisputed that, since the early part of 1956, all applicants for employment through Local 1351's

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[7] The testimony of Business Agent Morrow and some of the chief clerks reveals that practically all of the regular salaried monthly jobs and a majority of the regular weekly jobs are held by union members. Moreover, Local 1351's records show that normally there are considerably more nonmembers than members in daily attendance at the hiring hall seeking extra board work. Even as between the union members and nonmembers listed for extra board work, the Local's records show that the everage earnings of the union members for the 6-month period in 1955, during which equal percentages were collected from all employees and were subsequently refunded, must have been approximately twice that of nonmemers judging by the amount of the refunds.

[8] **The Great Atlantic and Pacific Tea Company**, 117 NLRB 1542.

hiring hall, have been required to fill out a form designating the Local as their bargaining representative and to agree to pay a percentage of their wages to the Local "as compensation for services rendered."[9] The collection of the percentages has been facilitated by the Respondent Companies' preparation of 2 checks in payment of the employees' wages — one, in the amount of percentage due to the Local and other for the balance of wages — which the Companies deliver to the Local for distribution to the employees. The Local, in turn, hands over the wage checks to the employees after they endorse over to the Local the percentage check.[10] Clearly, the Act does not sanction the imposition of the obligation to designate the Local as employees' bargaining representative and the payment of percentages as the price of employment.[11] Much less, does it permit, as the Trial Examiner also found, the Local's requirement of the payment of higher percentages by nonunion members than union members.

In the recent *Mountain Pacific* case,[12] the Board held that an employer may enter into an exclusive hiring ar-

[9] No similar written designations were required between January 1954 and early 1956. However, it is established that all applicants for work were required orally to agree to pay a percentage of their wages to Local 1351.

[10] This practice was instituted in July 1955. Previous thereto, each employer delivered his employees' wage checks to the local for distribution to the employees. At the time of distribution, an employee's percentage would be computed and the amount paid in cash to the local.

[11] **Houston Maritime Association, Inc.**, 121 NLRB No. 57; **United Association of Journeymen & Apprentices of Plumbing & Pipefitting Industry (J. S. Brown — E. E. Olds Plumbing & Heating Corporation)**, 115 NLRB 594.

[12] **Mountain Pacific Chapter of the Associated General Contractors, Inc.**, 119 NLRB Nos. 126 and 126-A.

rangement with a union provided adequate safeguards against discrimination are prescribed. These safeguards include the requirement that: (1) the selection of applicants for referral to jobs shall be on a nondiscriminatory basis and shall not be based on, nor in any way affected by, union membership bylaws, rules, regulations, constitutional provisions or any other aspect or obligation of union membership, policies or requirements; (2) the employer retains the right to reject any job applicant referred by the union; and (3) the parties to the agreement shall post in places where notices to employees and applicants for employment are customarily posted, all provisions relating to the functioning of the hiring arrangement, including safeguards that the Board deems essential to the legality of an exclusive hiring agrement. It is clear from the evidence that not only have the Respondents not provided for such safeguards but, as indicated above, have actually imposed discriminatory conditions of referral.

Although conceding the existence of an exclusive hiring arrangement, the Respondent Associations and Companies deny knowledge or responsibility for the discriminatory manner in which the hiring hall was operated. We find no merit in this position.

In the *Mountain Pacific* case, supra, the Board reiterated settled law that an employer, party to an exclusive hiring hall arrangement with a union, is responsible for the manner in which the hiring hall is operated, solely by reason of being party to such an arrangement.[13] In any event, the Respondent Companies' awareness of the discriminatory op-

[13] See also **N. L. R. B. v. Waterfront Employers of Washington**, 211 F.2d 946, 954 (C. A. 9).

eration of the hiring hall is established by the knowledge of their agents, the chief clerks, as well as by the Companies' acts in facilitating the Local's collection of percentages. Accordingly, we find that the Respondent Associations and Companies are liable for the unlawful operation of Local 1351's hiring hall and the resultant discrimination against Vinson and Linnenberg discussed in the Intermediate Report.

The Trial Examiner exonerated the Respondent International from any liability for the operation of the hiring hall because its connection with it, if any, was only a "passive one." We do not agree with this finding.

As indicated previously, the International's Constitution required its constituent Locals to give preference in employment to members of sister locals where there are more jobs than its members can handle. This plainly presupposes first preference in employment to the Local's own members. As we have found that Local 1351 has maintained and administered a preferential hiring hall system, contemplated by the International's Constitution, we find that the International, in effect, is a co-sponsor of the hiring hall and is liable with Local 1351, for the unfair labor practices thus committed.[11]

Accordingly, we find that the Respondent Associations and Companies violated Section 8 (a) (3) of the Act by being party to an exclusive hiring hall arrangement which gives preference in employment to members of Local 1351 and sister locals and which requires job applicants to des-

[11] Millwrights' Local 2232, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Farnsworth & Chambers, Inc.), 122 NLRB No. 41; Alexander-Stafford Corporation, 118 NLRB 79, 81.

ignate Local 1351 as their bargaining representative and to pay percentages of their wages. We further find that by this conduct and by facilitating the payment of these percentages, the Respondent Associations and Companies gave Local 1351 assistance and support prohibited by Section 8 (a) (2) and thereby interefered with, restrained, and coerced employees in violation of Section 8 (a) (1).

We further find that the Respondents Local 1351 and the International, by maintaining and operating the hiring hall as indicated above, caused and attempted to cause the Respondent Companies to discriminate against employees in violation of Section 8 (a) (3), and thereby violated Section 8 (b) (2) and (1) (A) of the Act.[15]

2. We find, as did the Trial Examiner, that employees G. R. Vinson and Frank A. Linnenberg were discriminatorily deprived of employment because they were not members of the Respondent Local 1351 and because they had filed unfair labor practices charges against the Respondents. We further find that the Respondents Local 1351 and its business agent, Morrow, caused such discrimination against Linnenberg in violation of Section 8 (b) (2) and (1) (A) of the Act, and together with the International caused such discrimination against Vinson. We also find that the Respondent Associations violated Section 8 (a) (1), (3) and (4) with respect to Linnenberg and together with their Member-Companies with respect to Vinson, by reason of being parties to the unlawful hiring arrangement which made the discrimination possible. In finding that the International and the Member-Companies did not violate the Act with respect to Linnenberg, we do so because such findings are barred by Section 10 (b).

[15] The Great Atlantic and Pacific Tea Company, supra.

The evidence reveals that Linnenberg last appeared at the hiring hall on October 17, 1955. The Member-Companies were first named as parties respondent in the second amended charge in Case No. 39-CA-524 which was filed on July 30, 1956, and served on August 1, 1956. The International was first named as a party respondent in the third amended charge in Case No. 39-CB-124, filed and served on November 1, 1956. In these circumstances, Section 10 (b) precludes a finding that the Member-Companies and the International are liable for the discrimination against Linnenberg.[16]

We also agree with the Trial Examiner that the evidence is insufficient to establish that the Respondents discriminated against employee H. H. Field.

The Remedy

Having found that certain of the Respondents have engaged in unlawful practices, we shall order that they cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act.

We have found that the Respondent Associations, their Member-Companies and the Respondent Unions are parties to an illegal hiring arrangement whereby preference in employment is given to members of the Respondent Local 1351 and sister Locals, and whereby employment is conditioned on the employees' designation of Local 1351 as

[16] **George D. Auchter Company**, 102 NLRB 881, 885, enf'd 209 F.2d 273 (C. A. 5). However, Section 10 (b) does not preclude our other unfair labor practice findings herein against the Respondents International and Member-Companies based upon the fact that the unlawful hiring practices were maintained and continued in effect within the 6-month statutory periods. **Id.** at page 883.

their bargaining representative and their payment of a percentage of their wages to Local 1351. We have further found that, by this conduct, the Respondent Associations and their Member-Companies have given unlawful support and assistance to Local 1351. In these circumstances, we find that it will effectuate the policies of the Act to direct the Respondents to refrain from maintaining or giving effect to their unlawful hiring arrangement.[17] In addition, we find that the policies of the Act can best be served by not permitting Local 1351 to continue to enjoy a representative status which it has achieved, strengthened and perpetuated by such unlawful conduct. Accordingly, we shall order the Respondent Associations and their Member-Companies to withdraw recognition from Local 1351 and to refrain from recognizing and dealing with it, and giving effect to any contract or agreement with Local 1351 or to any modification, extension, supplement or renewal thereof, unless and until Local 1351 has demonstrated its exclusive majority status pursuant to a Board-conducted election among the Respondent Companies' employees. However, the said Respondents are not required to vary the wages, hours or other lawful terms or conditions of employment heretofore established.

As indicated above, under the hiring hall arrangement involved herein, employees, among other things, are unlawfully required to pay Local 1351 a percentage of their earnings as the price of securing and retaining employment. Moreover, because of the operation of the unlawful hiring hall, employees were coerced to become and remain

[17] In so doing, we do not adopt the Trial Examiner's recommended order insofar as it indicates that the Respondent Unions may charge a fee as a condition of referral.

Union members which required payment of initiation fees, dues and other Union obligations. Therefore, to expunge the effects of these unlawful exactions, we shall order the Respondent Associations, their Member-Companies and the Respondent Unions jointly and severally to refund to present and former employees, the percentages, initiation fees, dues and other monies the employees have thus been required to pay.[18] Otherwise, the Respondent Unions would be permitted to enjoy the fruits of their unfair labor practices and the Respondent Associations and Member-Companies, who not only made such exactions possible but actually facilitated collection of the percentages would be exonerated from liability at the expense of the victims of the unlawful hiring arrangement. A Member-Company's liability, however, shall be limited only to monies paid by its employees to Local 1351 so that one Member-Company shall not be liable for refund of monies paid by the employees of another company. Furthermore, the period of liability for all the Respondents shall respectively begin six months before the date of the filing and service of

[18] **United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry (J. S. Brown — E. F. Olds Plumbing & Heating Corporation)** 115 NLRB 594; **N. L. R. B. v. Broderick Wood Products Co.**, decided November 12, 1958 (C.A. 10) 43 LRBM 2123, 2130-2131, enf'g 118 NLRB 38; **Local Union No. 450, International Union of Operating Engineers, AFL-CIO (Tellepsen Construction Company)**, 122 NLRB No. 78. We note that in the **Houston Maritime Association** case, **supra**, the Board did not direct the refund of any monies paid as the price for employment, other than percentages collected, although illegal practices similar to those in the instant case were involved. However, at the time the **Houston** case was decided, the Board was still in the process of reexamining the **Brown-Olds** principle, which it did not reaffirm until after the **Houston** decision issued.

the initial charge against each Respondent and shall extend to all monies thereafter paid which have not heretofore been refunded.[19]

In agreement with the Trial Examiner, we shall order that employees Vinson and Linnenberg be made whole for any loss of pay suffered by reason of the discrimination against them in the manner and to the extent set forth in the Intermediate Report, except as herein modified. Having found that the International is equally responsible for the discrimination practiced against Vinson, we shall make it jointly and severally liable for the loss suffered by him. In view of the fact that a finding that the Member-companies discriminated against Linnenberg is barred by Section 10 (b), we shall exonerate them from any liability for back pay to Linnenberg.

In accordance with Board policy, we shall abate the International's liability for back pay and the refund of percentages, dues, initiation fees and other monies, for the period from the date of the Intermediate Report to the date of this Decision and Order as the Trial Examiner had dismissed the complaint against the International.[20]

Because, by their conduct found to be violative of the Act, the Respondents have infringed upon the fundamen-

[19] In view of the fact that the Respondents have forfeited the benefits of the Settlement Agreement discussed in the Intermediate Report by reason of their subsequent unfair labor practices, we find, contrary to the Trial Examiner, that the refund herein ordered should not be limited to the $100 payable to those employees who have not yet received such sum, but the refund should extend to the full amount of the percentages unlawfully exacted from all the employees using the hiring hall, as provided above.

[20] *Los Angeles - Seattle Motor Express, Incorporated*, 121 NLRB No. 205.

tal rights of employees guaranteed by the Act, the commission of other unfair labor practices may thereby reasonably be anticipated. It will, therefore, be ordered that the Respondents cease and desist from in any other manner infringing upon the rights guaranteed employees by Section 7 of the Act.

ORDER

Upon the entire record in these cases, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

1. The Respondents, Houston Maritime Association, Inc., Houston, Texas, Master Stevedores Association of Texas, Houston, Texas, and the individual Respondent Companies, listed on "Appendix A," who are members of these Associations, their officers, agents, successors, and assigns, shall:

(1) Cease and desist from:

(a) Performing, maintaining, or giving effect to any hiring system, practice, or arrangement with Local 1351, Steamship Clerks and Checkers, International Longshoremen's Association, Independent, and International Longshoremen's Association, Independent, which grants preference in employment to members of said Unions, or any other labor organization, or which requires employees and applicants for employment, as a condition of employment, to designate Local 1351, or any other labor organization, as their bargaining agent, or to agree to pay, or pay, to said Local 1351, or any other labor organization, a percentage of their earnings derived from such employment;

(b) Performing, maintaining, or giving effect to the provisions of any agreement, understanding, or arrangement with said Local 1351, or any other labor organization of its employees, which unlawfully condition the employment of job applicants, or the retention of employees in employment, which the said Respondent Companies upon clearance or approval by said Local 1351, except as authorized in Section 8 (a) (3) of the Act;

(c) Encouraging membership in, or activities on behalf of the above-named Unions, or any other labor organization, by giving preference in employment to members of such organizations, or in any other manner discriminating against employees or applicants for employment in regard to their hire or tenure of employment, or other terms or conditions of employment, except as authorized in Section 8 (a) (3) of the Act;

(d) Discriminating against G. R. Vinson and Frank A. Linnenberg because they are not members of said Local 1351 or because said individuals filed charges;[21]

(e) Assisting or contributing support to said Local 1351 or any other labor organization of their employees;

(f) Recognizing Local 1351, or any successor thereto, as the representative of any of their employees for the purpose of dealing with said Local 1351 concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until said labor organization shall have demonstrated its exclusive majority representative status pursuant to a

[21] As Member-Companies were not found to have discriminated against Linnenberg, Sections 1 (1) (d) and 1 (2) (b) of this Order, relating to Linnenberg shall not apply to them.

Board-conducted election among the employees of the said Respondent Companies;

(g) Performing, maintaining, or giving effect to any cotnract or agreement, modification, extension, supplement, or renewal thereof, with said Local 1351, or any successor thereto, unless and until said labor organization shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among the employees of said Respondent Companies; provided, however, that nothing herein shall be construed to require the said Respondent Companies to vary any substantive provisions of such contract or agreement, or to prejudice the assertion by the employees of any rights which they may have thereunder;

(h) In any other manner, interfering with, restraining, or coercing employees or applicants for employment in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from said Local 1351 as the representative of any of the employees of the Respondent Companies for the purpose of dealing with said Local 1351, or any successor thereto, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until said Local 1351, or successor thereto, shall have demonstrated its exclusive majority representative status

pursuant to a Board-conducted election among the Respondent Companies' employees;

(b) Notify G. R. Vinson, Frank A. Linnenberg, the Respondent Local 1351, and the Respondent International Longshoremen's Association, Independent, in writing, that they have no objection to the employment of the said Vinson and Linnenberg because of their membership or nonmembership in the said union or because they have filed charges against the Respondents;

(c) Preserve and make available to the Board, or its agents, upon request, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of back pay and other monies due and the rights of employment under the terms of this Order;

(d) Post at their respective offices in Houston, Texas, and other places of business in the Port of Houston and vicinity copies of the notice attached hereto and marked "Appendix B."[22] Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by a representative of the Respondents Houston Maritime Association, Inc., Master Stevedores Association of Texas, and of each Respondent Company, be posted by them immediately on receipt thereof and be maintained by them for sixty (60) consecutive days in conspicuous places, including all places where notices

[22] In the event this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER"

to employees are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(e) Post at the same places and under the same conditions as set forth in (d) above, as soon as they are forwarded by the Regional Director, copies of the Respondent Unions' Notice herein Marked "Appendix C";

(f) Mail to the Regional Director for the Sixteenth Region signed copies of the notice attached hereto marked "Appendix B" for posting by Respondent Local 1351, Steamship Clerks and Checkers, International Longshoremen's Association, Independent; Respondent International Longshoremen's Association, Independent, and Respondent C. B. Morrow, at their respective offices, hiring halls, and meeting halls in places where notices to members and to other persons using Local 1351's hiring hall are customarily posted. Copies of said notice, to be furnished by the Regional Director, shall, after being duly signed by representatives of the Respondent Associations and each Member-Company thereof, be forthwith returned to the Regional Director for such posting;

(g) Notify the Regional Director for the Sixteenth Region, in writing, within ten (10) days from the date of this Order, as to what steps the Respondent Associations and the Respondent Companies have taken to comply herewith.

II. Respondent Local 1351, Steamship Clerks and Checkers, International Longshoremen's Association, Independent, and Respondent International Longshoremen's Association, Independent, their officers, representatives, agents, including the Respondent C. B. Morrow, Business agent of said Local 1351, successors, and assigns, shall;

1. Cease and desist from:

(a) Performing, maintaining, or giving effect to any hiring system, practice or arrangement with Houston Maritime Association, Inc., or Master Stevedores Association of Texas, or any of the Member-Companies thereof, which unlawfully grants preference in employment to members of the Respondent Unions, or which unlawfully requires employees, or job applicants, as a condition of employment, to designate the Respondent Local 1351, as their bargaining agent and to agree to pay, or pay, to Respondent Local 1351, a percentage of their earnings derived from such employment;

(b) Performing, maintaining, or giving effect to the provisions of any agreement, understanding, or arrangement, with said Associations or any of the Member-Companies thereof, or with any other employer, which unlawfully condition the employment of job applicants, or the retention of employees in employment with any employer, upon clearance or approval by the Respondent Unions, except as authorized in Section 8 (a) (3) of the Act;

(c) Causing or attempting to cause said Associations or any Member-Company thereof, or any other employer, to deny employment to Vinson and Linnenberg, or to any other applicant for employment, in violation of Section 8 (a) (3) of the Act, or otherwise to discriminate against them because they are not members of the Respondent Unions, or because they have filed charges against the Respondents;[23]

[23] As the Respondent International was not found to have discriminated against Linnenberg, Section II (1) (c) and II (2) (a) of this Order relating to Linnenberg shall not apply to it.

(d) Performing, maintaining, or giving effect to any contract or agreement, modification, extension, supplement or renewal thereof, with said Associations and Member-Companies thereof, or any successor or successors thereto, unless and until said Respondent Local 1351 shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among the employees of the Respondent Companies;

(e) In any other manner, restraining or coercing employees or applicants for employment with the Respondent Companies, or any other employer, in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Notify G. R. Vinson, Frank A. Linnenberg, the Respondents Houston Maritime Association, Inc., Master Stevedores Association of Texas, and each Member-Company thereof, in writing, that the Respondent Unions have no objection to the employment by said Respondent Companies of said Vinson and Linnenberg, or any other employee or applicant for employment, because of their membership or nonmembership in the Respondent Unions, or because they have filed charges against the Respondents;

(b) Preserve and make available to the Board or its agents, upon request, for examination and copying, all records and reports necessary to analyze the amounts of

back pay and other monies due, and the rights of employment, under the terms of this Order;

(c) Post at their respective offices, hiring halls, and meeting halls, copies of the notice attached hereto, and marked "Appendix C."[24] Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by Respondent Unions' representatives and by Respondent Local 1351's Business Agent, C. B. Morrow, be posted by them immediately on receipt thereof and be maintained by them for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members and to other persons using the Local 1351's hiring hall are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material;

(d) Post in the same places and under the same conditions as set forth in (c) above, as soon as they are forwarded by the Regional Director, copies of the Respondent Associations' and Member-Companies' Notice herein marked "Appendix B";

(e) Mail to the Regional Director for the Sixteenth Region signed copies of the notice attached hereto marked "Appendix C" for posting by Respondents Houston Maritime Association, Inc., Master Stevedores Association of Texas, and each Member-Company thereof, at their places

[24] In the event this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

of business in the Port of Houston, Texas, and vicinity, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director, shall after being duly signed by a representative of the Respondent Unions and the Respondent C. B. Morrow, be forthwith returned to the Regional Director for such posting:

(f) Notify the Regional Director for the Sixteenth Region, in writing, within ten (10) days from the date of this Order as to what steps they have taken to comply herewith.

III. The Respondents, Houston Maritime Association Inc., Master Stevedores Association of Texas, and the Member-Companies thereof listed in "Appendix A," their officers, agents, successors and assigns; the Respondent Local 1351, Steamship Clerks and Checkers, International Longshoremen's Association, Independent, and the Respondent International Longshoremen's Association, Independent, their officers, representatives, agents, successors, and assigns, shall jointly and severally make whole G. R. Vinson and Frank A. Linnenberg for any loss of pay they may have suffered because of the discrimination against them in the manner and to the extent set forth in the Intermediate Report, as modified by the Board's Decision and Order herein; and shall jointly and severally reimburse all present and former employees, who have unlawfully been required to pay a percentage of their wages, initiation fees, dues and other monies, to the Respondent Local 1351, in the manner and to the extent set forth in the section of the Board's Decision and Order entitled "The remedy";

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges that the Respondents Galveston Maritime Association, Inc., International Lougshoremen's Association, Local 1665, Independent, and T. M. Bennet, President; South Atlantic and Gulf Coast District, International Longshoremen's Association, Independent, and Ralph Massey, President; and Avenue N Corporation committed violations of the Act; that the individual Respondent Companies and the Respondent International Longshoremen's Association, Independent, have unlawfully discriminated against Frank A. Linnenberg; and insofar as it alleges unfair labor practices not found herein..

Dated, Washington, D. C., Dec. 29, 1958.

Boyd Leedom, Chairman
Philip Ray Rodgers, Member
Stephen S. Bean, Member
Joseph Alton Jenkins, Member
John H. Fanning, Member
NATIONAL LABOR
RELATIONS BOARD

(SEAL)

APPENDIX A

MEMBERS OF HOUSTON MARITIME ASSOCIATION, INC.

Biehl & Company, Houston,
Cotton Exchange Building, Houston, Texas
E. S. Binnings, Inc.,
Cotton Exchange Building, Houston, Texas
Bloomfield Steamship Company,

Cotton Exchange Building, Houston, Texas
Fowler & McVitie, Inc.
Cotton Exchange Building, Houston, Texas
Garcia Line Corporation,
Cotton Exchange Building, Houston, Texas
Hansen, Tidemann & Dalton, Inc.
Cotton Exchange Building, Houston, Texas
Isthmian Steamship Company,
Cotton Exchange Building, Houston, Texas
Lykes Brothers Steamship Company, Incorporated,
Cotton Exchange Building, Houston, Texas
Peter R. Phillips, Thomas Phillips, Catherine Elizabeth Wipprecht, a partenrship dba Wm. Parr & Co.,
Cotton Exchange Building, Houston, Texas
Rice, Kerr & Company, Inc.,
Cotton Exchange Building, Houston, Texas
States Marine Corporation of Delaware,
Cotton Exchange Building, Houston, Texas
Strachan Shipping Company,
Cotton Exchange Building, Houston, Texas
Texas Marine Transport Company, Inc.
507 State National Building, Houston, Texas
Texas Transport & Terminal Company, Inc.,
Cotton Exchange Building, Houston, Texas
Waterman Steamship Corporation,
Cotton Exchange Building, Houston, Texas

MEMBERS OF
MASTER STEVEDORES ASSOCIATION OF TEXAS
Houston Area

Atlantic & Gulf Stevedores, Incorporated,
5513 Clinton Drive, Houston, Texas

Canadian Gulf Line, Ltd.,
Post Office Box 5355, Houston, Texas
Gulf Stevedore Corporation,
P.O. Box 1443, Houston, Texas
Liberty Stevedore Co., Inc.,
508 Cotton Exchange Building, Houston, Texas
Southern Stevedoring Company,
Post Office Box 2464, Houston, Texas
Southern Stevedoring & Contracting Company,
Cotton Exchange Building, Houston, Texas
Strachan Shipping Company,
Cotton Exchange Building, Houston, Texas
Suderman Stevedores, Inc.,
U. S. National Bank Building, Galveston, Texas
Texas Contracting Company,
Cotton Exchange Building, Houston, Texas
Texas Star Stevedoring Company,
Cotton Exchange Building, Houston, Texas
The Texports Stevedore Co., Inc.,
Cotton Exchange Building, Houston, Texas
United Stevedoring Corporation,
Cotton Exchange Building, Houston, Texas
Young & Company of Houston,
Cotton Exchange Building, Houston, Texas

APPENDIX B

NOTICE TO ALL EMPLOYEES PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT perform, maintain, or give effect to any hiring system, practice, or arrangement with LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, and INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, which grants preference in employment to members of said Unions, or any other labor organization, or which requires employees and applicants for employment, as a condition of employment, to designate said LOCAL 1351, or any other labor organization, as a bargaining agent, or to agree to pay, or pay, to said LOCAL 1351, or any other labor organization, a percentage of their earnings derived from such employment.

WE WILL NOT perform, maintain, or give effect to the provisions of any agreement, understanding, or arrangement with said LOCAL 1351, or any other labor organization of our employees, which unlawfully condition the employment of job applicants, or the retention of employees in employment, with any of the undersigned COMPANIES, upon clearance or approval by said LOCAL 1351, except as authorized in Section 8 (a) (3) of the Act.

WE WILL NOT encourage membership in, or activities on behalf of, the above-named Unions, or any other labor organization, by giving preference in employment to members of such organizations, or in any other manner discriminating against them in regard to their hire or tenure of em-

ployment, or other term or condition of employment, except as authorized in Section 8 (a) (3) of the Act.

WE WILL NOT discriminate against G. R. VINSON and FRANK A. LINNENBERG because they are not members of said LOCAL 1351, or because the said individuals filed charges.

WE WILL NOT assist or contribute support to said LOCAL 1351 or any other labor organization of our employees.

WE WILL NOT recognize LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, or any successor thereto, as the representative of any of our employees for the purpose of dealing with said LOCAL 1351 concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment, unless and until said labor organization shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among our employees.

WE WILL NOT perform, maintain or give effect to any contract or agreement, modification, extension, supplement or renewal thereof with said LOCAL 1351 or any successor thereto, unless and until said labor organization shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among our employees.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees or applicants for employment in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

WE WILL notify G. R. VINSON, FRANK A. LINNENBERG, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT and LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, in writing, that we have no objection to the employment of said VINSON and LINNENBERG.

WE WILL make whole G. R. VINSON and FRANK A. LINNENBERG for any loss of pay they may have suffered because of the discrimination against them.

WE WILL reimburse all of our present and former employees who have unlawfully been required to pay a percentage of their wages to the said Local 1351.

All our employees are free to become or remain, or refrain from becoming or remaining, members of any labor organization, except to the extent that this right may be affected by an agreement conforming to the applicable provisions of Section 8 (a) (3) of the National Labor Relations Act.

The provisions of this notice relating to the discrimination against Linnenberg shall not be taken to apply to the individual Employer Companies.

HOUSTON MARITIME ASSOCIATION, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

MASTER STEVEDORES ASSOCIATION OF TEXAS
(Employer)

Dated _____ By _____
(Representative) (Title)

(Employer Company)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from date of posting and must not be altered, defaced or covered by any other material.

APPENDIX C

NOTICE TO

ALL MEMBERS OF LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, AND TO ALL CLERKS, CHECKERS AND TIMEKEEPERS EMPLOYED IN THE PORT OF HOUSTON AND VICINITY.

PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT perform, maintain, or gives effect to any hiring system, practice, or arrangement with HOUSTON MARITIME ASSOCIATION, INC., or MASTER STEVEDORES ASSOCIATION OF TEXAS, or any of the MEMBER-COMPANIES thereof, which unlawfully grants preferences in employment to our members or which unlawfully requires employees or job applicants, as a condition of employment, to designate LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, as their bargaining agent, and to agree to pay, or pay, to said LOCAL 1351 a percentage of their earnings derived from such employment.

WE WILL NOT perform, maintain, or give effect to the provisions of any agreement, understanding, or arrangement with the said ASSOCIATIONS or any MEMBER-COMPANY thereof, or with any other employer, which unlawfully condition the employment of applicants for employment, or the retention of employees in employment, with any employer upon clearance or approval by us, except as authorized in Section 8 (a) (3) of the Act.

WE WILL NOT cause or attempt to cause said ASSOCIATIONS or any MEMBER-COMPANY thereof, or any other employer, to deny employment to G. R. VINSON and FRANK A. LINNENBERG, or to any other applicant for employment in violation of Section 8 (a) (3) of the Act, or otherwise discriminate against them because they have filed charges against us.

WE WILL NOT perform, maintain, or give effect to any contract or agreement, modification, extension, supplement, or renewal thereof with said ASSOCIATIONS and MEMBER-COMPANIES thereof, or any successor or successors thereto, unless and until LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among the employees of the said COMPANIES.

WE WILL NOT in any other manner restrain or coerce employees or applicants for employment with the said COMPANIES, or any other employer, in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

WE WILL notify G. R. VINSON, FRANK A. LINNENBERG, HOUSTON MARITIME ASSOCIATION, INC., MASTER STEVEDORES ASSOCIATION OF TEXAS and each MEMBER-COMPANY thereof, in writing, that we have no objection to the employment by said COMPANIES of the said VINSON and LINNENBERG.

WE WILL make whole G. R. VINSON and FRANK A. LINNENBERG for any loss of pay they have suffered because of the discrimination against them.

WE WILL reimburse all present and former employees who have unlawfully been required by us to pay a percentage of their wages to LOCAL 1351, STEAMSHIP CLERKS AND CHECKERS INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT.

The provisions of this notice relating to the discrimination against Linnenberg shall not be taken to apply to International Longshoremen's Association, Independent.

INTERNATIONAL
LONGSHOREMEN'S
ASSOCIATION,
INDEPENDENT
(Labor Organization)

Dated _____ By _____
(Representative) (Title)

LOCAL 1351, STEAMSHIP
CLERKS AND CHECKERS,
INTERNATIONAL
LONGSHOREMEN'S
ASSOCIATION,
INDEPENDENT
(Labor Organization)

Dated _____ By _____
(Representative) (Title)

Dated _____ By C. B. MORROW
(Business Agent, Local 1351)

This notice must remain posted for 60 days from date of posting and must not be altered, defaced or covered by any other material.

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Virginia Electric & Power Co. v. *National Labor Relations Board*, 319 U.S. 533	8

STATUTE:

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.*)

Section 7	11
Section 8(a)(1)	6, 11
Section 8(a)(2)	6, 9, 11
Section 8(a)(3)	6, 11
Section 8(b)(1)(A)	6, 12
Section 8(b)(2)	6, 12
Section 10(c)	12

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 1102

HOUSTON MARITIME ASSOCIATION, INC., ET AL.,
Petitioners

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 16-23), is reported at 329 F. 2d 259. The Board's original decision and order (Pet. 64-86) are reported at 122 NLRB 692, and its supplemental decision and amended order (Pet. 39-55) are reported at 139 NLRB 352.

JURISDICTION

The judgment of the court of appeals (Pet. 23-24) was entered on February 13, 1964, and its decree was entered on March 26, 1964 (Pet. 24-31). The petition for a writ of certiorari was filed on May 12, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether substantial evidence supports the Board's finding that the employers participated with the union in maintaining a hiring hall arrangement which discriminated against nonunion employees, both in referrals for employment and in the fees exacted for the use of the hall.

2. Whether the Board exceeded its remedial power by ordering the employers, "jointly and severally" with the union, to refund to the nonunion employees that portion of the fee exacted from them which was not used to defray the expenses incurred in running the union hiring hall.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are reprinted in the Appendix, *infra*, pp. 12-13.

STATEMENT

A. The Board's Findings of Fact

1. The preferential hiring system

Houston Maritime and Master Stevedores are trade associations whose member steamship and stevedoring companies employ clerks, checkers, and timekeepers (herein referred to generally as clerks), represented by Local 1351, Steamship Clerks and Checkers, International Longshoremen's Association (J.A. I 258-261).[1]

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[1] References designated "J.A. I" and "J.A. II" are to volumes I and II of the joint appendix printed for the court below and filed with the petition.

The member companies of the associations utilized Local 1351's hiring hall as the exclusive source for securing their clerks and checkers in the Port of Houston (Pet. 65, J.A. I 258). In administering this hiring hall, Local 1351 maintains a list of applicants available for employment. This list designates members and non-members of the Union. (Pet. 65-66, J.A. I 259.) Whenever the companies require any men, their chief clerks, who are supervisory employees with authority to hire and discharge, telephone the Local's business agent. The business agent reads to the chief clerks the list of available employees, from which the latter select those to be hired (Pet. 63, J.A. I 258-259). Although the business agent normally does not specify which applicants are union or nonunion members, practically all of the chief clerks are union members acquainted with the membership (Pet. 66, J.A. I 259). Moreover, many of the chief clerks serve as officials of the Local and on its committees, including the contract negotiating and grievance committees which bargain with the companies (Pet. 66, J.A. I 259).

Under the International's Constitution, Local 1351 is obligated to give preference in employment to members of a sister local when there are more jobs than its members can handle. This provision contemplates that the Local will give first preference to its own members over other applicants. (Pet. 67, J.A. I 262.)[2] Moreover, the Local's business agent is required by its Constitution to see that the Local's rules are ob-

[2] Earlier contracts of the Local explicitly so provided (Pet. 67, J.A. I 255, 256). The elimination of this provision resulted in no real change in the method of hiring clerks (Pet. 68, J.A. I 258; J.A. II 86, 97-98, 108).

served (Pet. 67, J.A. I 261). The chief clerks, as members subject to the Local's discipline and as union officials, were required to adhere to the Local's constitutionally-imposed policy of preferential hiring (Pet. 67).

Union members were given a preference in hiring. The record shows that members of Local 1351 earned more money than nonmembers, were employed for longer periods of time, and were given the higher paying clerks' jobs rather than the lower paying checker's jobs which nonunion men received (Pet. 67-68, J.A. II 263-272, 320-321). Furthermore, there is evidence of specific discrimination against two experienced nonunion men, Vinson and Linenberg. When they used the Local's hiring hall, they were repeatedly passed over for employment. Not only were members of Local 1351 sent out first, but Vinson and Linenberg were not referred even when no members of the Local were available. Instead, Local 1351's Business Agent Morrow referred company requests for employees to the hiring halls of two sister locals in Houston. (Pet. 67, 72-73; J.A. I 270-274.)

2. The service fee arrangement

All applicants for employment through Local 1351's hiring hall are required to sign a form designating it as their bargaining representative and binding them to pay it a percentage of their wages for "services rendered" (Pet. 68-69, J.A. I 264). In addition, members pay $1 a month dues (J.A. I 268; J.A. II 189). Prior to July 1955, members paid two percent of their wages and nonmembers paid five percent (J.A. I 264, 252; J.A. II 14, 52). Thereafter, both groups paid the same percentage, first five percent and later three percent

(J.A. I 264; J.A. II 14, 252-253, 272-274, 283). The Local commingles all of its receipts, the percentages paid by nonmembers going into its general funds as "dues" (J.A. I 264; J.A. II 189, 190).

Employees are paid by checks which are distributed at the union hall (Pet. 68-69, J.A. I 264; J.A. II 50-52, 105, 123, 132). Prior to July 1955, each employee received one check; he then paid the percentage in cash when he received his check from the business agent (Pet. 69, n. 10; J.A. II 53). Thereafter, the companies prepared two checks. One is for the service fees, the other is for the balance of the employee's wages (Pet. 68-69, J.A. I 264; J.A. II 137-144, 93-94). The business agent gives the employee his wage check after the latter endorses the percentage check over to the Local (Pet. 68-69, J.A. I 265; J.A. II 54-55, 139-142).

Although members and nonmembers pay the same percentage, members receive twice as much insurance as do nonmembers and their families receive death benefits (J.A. I 268 n. 7; J.A. II 187). The cost of operating the Local is paid from its general funds, to which the percentage payments of nonmembers have been allocated (J.A. I 269; J.A. II 174-177, 181-197). In November 1955, each of the stockholders of a corporation named "Avenue N"—whose only property is the building which houses the hiring hall and the Local's offices—received a check for $100 (J.A. I 265; J.A. II 117, 56, 198, 159-160, 164-165, 172). All the stockholders were members of Local 1351, and money they received from the corporation was disbursed from the Local's general funds (J.A. I 265-267).

B. The Board's Conclusions and Order

On these facts, the Board concluded that the associations and their member companies violated Section 8(a)(1) and (3) of the Act by being parties to a hiring arrangement with Local 1351 which gave preference in employment to members of that Local and its sister locals, and which required job applicants as a condition of employment to designate Local 1351 as their bargaining representative and pay it a percentage of their wages;[3] and that, by this conduct and by facilitating Local 1351's collection of such percentages, they violated Section 8(a)(2) of the Act (Pet. 71-72, 41-52). The Board further concluded that Local 1351 and the International, by maintaining and operating the hiring hall on a discriminatory basis, violated Sections 8(b)(1)(A) and (2) of the Act (Pet. 72, 42).[4]

The Board ordered the companies and the Union to cease and desist from the unfair labor practices found and from in any other manner restraining or coercing employees in the exercise of the rights guaranteed by the Act. Affirmatively, the Board ordered, *inter alia*, that the companies and the Union, jointly and sev-

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[3] Members Rodgers and Leedom were of the view that, because of the discriminatory operation of the hiring hall, it was unlawful to charge either members or nonmembers a fee for the use of the hall. Members Fanning and Brown were of the view that the discriminatory operation of the hiring hall merely made it unlawful to exact a fee for the use of the hall from nonmembers. Chairman McCulloch agreed that the exaction of a fee from nonmembers was unlawful—not because the hall was discriminatorily operated, but because, since the monies exacted went into the Local's general funds, the nonmember, unlike the member, was forced to pay for benefits which he did not receive. (Pet. 44-45.)

[4] The Board also found violations of the Act with respect to the specific discrimination practiced against nonmembers Vinson and Linenberg (Pet. 72-73, 42).

erally, refund to all nonmembers the percentage fees exacted from them. The Board provided that the period of liability for the percentages commenced six months prior to the filing and service of the initial unfair labor practice charges, and further provided that each company would be liable only for the monies paid by its own employees (Pet. 45-54).

C. The Court of Appeals' Decision

The court of appeals (per Judge Fahy) held that the Board's unfair labor practice findings were supported by substantial evidence and enforced its order except for the provision requiring reimbursement of the percentage fees (Pet. 18). As to the latter, the court concluded that the Board had improperly ordered reimbursement of all the fees paid by nonmembers. It stated (Pet. 21): "Discrimination in the exaction of the percentages occurred to the extent non-members were required to pay more than the service justified, that is, paid for activities of the Union of which they were not beneficiaries. Affirmative action which goes beyond remedying the discrimination cannot be said to effectuate the policies of the Act." The court remanded the case to the Board "to determine such proportion of the fees paid as was reasonably related to the service provided by the Union, having in mind the cost to the Union of providing the services" (Pet. 21-22).[5]

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[5] The Board has decided to accept the remand.

ARGUMENT

The decision of the court below is correct and is not in conflict with the decision of any other circuit. There is no occasion for further review.

1. Petitioners' contention (Pet. 12-14) that the Board improperly held that they participated with the Union in maintaining the discriminatory hiring arrangement presents only an evidentiary issue which does not warrant review by this Court. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 491. In any event, it is clear from the opinion below that the Board's finding has ample support.

2. There is no substance to petitioners' further claim (Pet. 8-12) that, even though the employers (no less than the Union) violated the Act, the Board could not properly order them, jointly and severally with the Union, to reimburse the nonunion employees for a portion of the fees exacted under the illegal hiring arrangement. It is well settled that the Board may order an employer who is party to an illegal union security agreement to reimburse his employees for the dues collected thereunder, though the monies went to the union. See, e.g., *Virginia Electric & Power Co.* v. *National Labor Relations Board*, 319 U.S. 533, 543-545; *Dixie Bedding Manufacturing Co.* v. *National Labor Relations Board*, 268 F. 2d 901, 907 (C.A. 5). The theory of those cases is that the employer, by acquiescing in practices which require his employees against their will and as a condition of employment to support the Union, has contributed to the wrongdoing and thus is properly held responsible for remedying the effects of the unfair labor practice. Cf. *Radio Officers* v. *National Labor Relations Board*, 347 U.S. 17, 54-55. That

imposing a reimbursement obligation on the employer may have the incidental effect of allowing the union to keep a portion of the money it has illegally received,[6] is deemed to be outweighed by the overriding policy of making the employees whole for the losses which they incurred. The same principles are applicable here,[7] and refute petitioners' contention that the Board's refund order would force it to contribute support to the Union, in violation of Section 8(a)(2) of the Act.[8]

Nor is it true that the Board's order as modified by the court below would require petitioners to interject themselves into the internal affairs of the Union. The conduct held illegal is requiring nonunion employees to pay, not only for the cost of the hiring hall, but also for other union activities in which they did not participate. Petitioners can insure that this condition is alleviated without having to keep a continual check on the costs of the Union's normal operations and those of the hiring hall.[9] In any event, the question

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[6] It is the Board's practice in joint and several liability cases to require the employer and the union to split the liability if each is solvent. *National Labor Relations Board* v. *Puerto Rico Steamship Association*, 211 F. 2d 274 (C.A. 1).

[7] Indeed, in this case, it is clear that the employers not only acquiesced in the illegal arrangement but derived benefits therefrom, for they were spared the burden and expense of having to hire on their own.

[8] Section 302(a)(1) of the Labor Management Relations Act (Pet. 8-9), bars the employer from using the employees, absent a valid checkoff authorization, as a conduit for making payments to a labor organization. This is obviously not the case where the employer is required to refund money to the employees.

[9] For example, the Union might agree to charge members and nonmembers the same fee for the use of the hiring hall and to set aside all of the sums collected from such fees exclusively for hiring hall purposes.

is premature and should await the outcome of the further Board proceedings in the case.

CONCLUSION

For the above reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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June, 1964.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq*), are as follows:

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organiza-

tion is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) unless following an election held as provided in section 9 (e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: * * *

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

SEC. 10. * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

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